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LEADING STATUTES  
SUMMARISEL.

SCIRE LEGES NON EST VERBA EARUM TENERE,  
SED VIM AC MENTEM.

# LEADING STATUTES SUMMARISED

FOR THE USE OF STUDENTS.

BY

ERNEST C. THOMAS,

LATE BACON SCHOLAR OF THE HON. SOCIETY OF GRAY'S INN;  
AUTHOR OF "LEADING CASES IN CONSTITUTIONAL LAW."



LONDON:  
STEVENS & HAYNES,

Law Publishers,

BELL YARD, TEMPLE BAR.

1878.

*L. Eng. A. 74 c. 9*



LONDON  
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## PREFACE.

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THE object of the present little work is to afford to the law-student, on his making a first acquaintance with the Statute book, a guide to its most important chapters. But it is not only an enumeration of these chapters : it is also a summary of them. The student has to contend not only with the great bulk of Statute law, but also with the way in which very much of it is drawn. As it has been put by Sir James Stephen recently, the sections of an Act of Parliament "consist of single sentences of enormous length, drawn up, not with a view to communicating information easily to the reader, but to prevent a person bent upon doing so from wilfully misunderstanding them." \* The summary here presented is not designed to supersede the necessity of a direct reference by the student to the Statutes themselves. But as it may prove useful to direct him through the mazes of the "written law," so it may also be a

\* Digest of the Criminal Law, 1877, p. xix.

convenient handbook to be kept beside him for easy reference, or for entering further annotations of his own on those Statutes with which it is most essential that he should be familiar.

The order in which the Statutes are arranged is chronological, except that Statutes on the same subject are collected together where the subject is first handled.

I have to thank W. Edmund Ball, Esq., LL.B., Barrister-at-law, of this Inn, for much assistance.

GRAY'S INN, *October, 1878.*

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# LEADING STATUTES SUMMARISED.

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## INTRODUCTION.

THE Statute Law, or *lex scripta*, as it is frequently called in distinction from the Common or Customary Law, consists of the will of the Legislature expressed in writing. While the Common Law has to be gathered for the most part from the discussions upon particular cases after the event, the Statute Law consists of a body of general commands issued before the event.

Under our constitution, the legislative function, or the function of enacting statutes, belongs to the Crown in Parliament. The task of interpreting and applying these statutes belongs to the Judges, who are guided by certain established principles of construction. They are bound to take judicial notice of all public, as distinguished from private Acts of Parliament.

Their duty is simply to interpret and enforce the intentions of the Legislature, and not to usurp the legislative function, in accordance with the maxim: *Judicis est jus dicere non jus dare*. When once the intention of Parliament is plain, it is not the province of a Court to consider its wisdom or policy.

The main rules of interpretation may be stated as follows:

i. The Judges will, as laid down by Coke,<sup>1</sup> take into account these four circumstances: (*a.*) What was the

<sup>1</sup> 3 Rep. 7, *Heydon's Case*.

*Leading Statutes Summarised.*

law before the making of the Act ; (b.) What was the mischief or defect against which the law did not sufficiently provide ; (c.) What remedy Parliament has applied to cure the disease ; (d.) The true reason of the remedy : and it is the business of the Judges so to construe the Act as to suppress the mischief, and advance the remedy.

ii. An important rule of construction (the 'golden rule' as it has been called) is that the words of an Act must be construed in their plain and grammatical sense. The words and phrases must be taken in their technical meaning, if they have acquired one, and in their popular meaning if they have not.

iii. General words occurring in a statute must not be unduly extended ; and where they follow particular words apply only to such persons and things as are *ejusdem generis*.

iv. Unless otherwise expressed, a statute must be construed as prospective, and not retrospective in its operation.

v. Penal statutes must be construed strictly ; remedial statutes liberally.

vi. When a statute is repealed, it must be treated, except as to past transactions, as if it had never existed. Where a statute repealing a former Act has itself been afterwards repealed, the former Act would have been revived until 13 & 14 Vict. c. 21, which provides that where any Act repealing in whole or in part any former Act is itself repealed, such last repeal shall not revive the provisions before repealed, unless words be added for that purpose.

Unless otherwise stated, the operation of an Act is understood to commence from the date of its receiving the Royal Assent.

**COMMON LAW**  
**WITH**  
**BANKRUPTCY AND CRIMINAL LAW.**





**LIMITATION OF ACTIONS: 21 Ja. I. c. 16 (1624).**

Actions upon the case (except slander), actions for account, for debt, trespass, detinue, and replevin for goods and chattels, and the action trespass *quare clausum fregit* to be brought within *six years* of cause of action.

Actions of trespass, assault, battery, wounding and imprisonment within *four years*.

Action for slander within *two years*. [In actions for slander, where the jury give less than 40s. damages, plaintiff shall recover no more costs than damages.]

In case of infants, feme covert, lunatics [and persons beyond sea or imprisoned], these times shall begin to run from removal of disability.

*Note.*—The above provision as to costs was held to be repealed by the Judicature Acts (Ord. LV.) by the House of Lords in *Garnett v. Bradley*,<sup>1</sup> overruling a judgment of the Court of Appeal and affirming a judgment of the Court of Common Pleas.

With regard to persons beyond sea or imprisoned, see 19 & 20 Vic. c. 97, *post*, p. 23.

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**3 & 4 Will. IV. c. 42 (1833).**

Actions of debt for rent upon indenture of demise or covenant, or debt upon bond, or other specialty actions of debt or *scire facias* upon recognizance to be brought within *twenty years*. Sect. 3.

Actions for penalties, damages, or sums of money—given to the party grieved to be brought within *two years*.

<sup>1</sup> L. R. 2 Ex. D. 349, C. A.

Actions of debt on award, where submission is not by specialty, for fine due in respect of copyhold estates, for an escape, or for money levied on a *feri facias*, to be brought within *six years*.

In case of persons under disability, time to begin to run from removal of disability.

If acknowledgment in writing be made by person liable under indenture, specialty, or recognizance, or his agent, or if payment be made on account of principal or interest, time to begin to run from last such acknowledgment in writing or part payment.

*Note.*—The Statutes of Limitation are numerous, and only the most important are here inserted. They are (1) 21 Ja. I. c. 16, given above; (2) 3 & 4 Will. IV. c. 27, at p. 76; and (3) 3 & 4 Will. IV. c. 42, above. Important provisions as to real property are contained also in an Act to come into operation 1 Jan. 1879, (4) 37 & 38 Vic. c. 57, at p. 78. For the general subject, see Broom, Com. Law, 5th ed. pp. 163—170; Indermaur's Prin. Com. Law, pp. 201—204, etc.

**STATUTE OF FRAUDS: 29 Car. II. c. 3 (1677),**

*Section 4.* No action to be brought to charge any executor or administrator upon any special promise to answer damages out of his own estate; or to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another; or to charge any person upon agreement made in consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person lawfully authorised by him to do so. Sect. 4.

*Section 17.* No contract for the sale of any goods, wares, or merchandises for the price of £10 or upwards to be allowed to be good unless the buyer accept part of the goods so sold and actually receive the same; or give something in earnest to bind the bargain; or in part payment; or that some note or memorandum in writing of the said bargain be made and signed by the party to be charged, or agent lawfully authorised to do so. Sect. 17

*Note.*—These sections must be read together with the 7th section of Lord Tenterden's Act (9 Geo. IV. c. 14), *post*, p. 11. The remaining sections of the Statute of Frauds will be found at pp. 67–68. The full title of the act is "An Act for the Prevention of Frauds and Perjuries."

Comp. *Birkmyr v. Darnell* and *Peter v. Compton*, *Indermaur*, C. L. Cases, pp. 19–20.



**BILLS OF EXCHANGE ACCEPTANCES:****1 & 2 Geo. IV. c. 78 (1821).**

An acceptance of a bill payable at a banker's or other place is a *general* acceptance.

If the acceptance expresses that the bill is accepted payable at a banker's or other place only, *and not otherwise or elsewhere*, this is a qualified acceptance, and the acceptor will only be liable in case of non-payment on due demand at such place.

Acceptance of an inland bill must be in writing on the bill.

**SUMMARY PROCEDURE ON BILLS OF EXCHANGE****ACT: 18 & 19 Vict. c. 67 (23rd July, 1855).**

All actions upon bills of exchange or promissory notes to be by writ of summons endorsed in form provided by Act. Plaintiff on filing affidavit of personal service may at once sign final judgment.

Defendant shewing defence on merits to have leave to appear. Judgment may be set aside under special circumstances. Same remedy for recovery of expenses of noting for non-acceptance as for amount of bill.

Holder may issue one summons against all or any parties to bill.

**FORGED ENDORSEMENTS ON CHEQUES:****16 & 17 Vict. c. 59 (1853).**

Sect. 19.

Draft or order drawn on Banker payable to order on demand purporting to be endorsed by person to whom drawn payable to be sufficient authority to banker to pay the amount of such draft or order; banker not to be required to prove authenticity of such endorsement or any subsequent endorsement.

**CROSSED CHEQUES ACT, 1876: 39 & 40 Vict. c. 81.**

Cheque is crossed *generally* where it bears across its face an addition of the words "and company" between two parallel transverse lines, or of two parallel transverse lines simply either with or without the words "not negotiable." Banker on whom cheque crossed generally is drawn not to pay it except to a banker.

Cheque is crossed *pecially* where it bears across its face an addition of the name of a banker either with or without the words "not negotiable." Banker on whom cheque specially crossed is drawn not to pay it except to banker to whom crossed.

Lawful holder may cross an uncrossed cheque either generally or specially; where cheque is crossed generally he may cross it specially; where cheque is crossed generally or specially he may add words "not negotiable."

Where a cheque is crossed specially, banker to whom it is crossed may again cross it to another banker being his agent for collection; but except in this case where cheque is crossed specially to more than one banker, banker on whom it is drawn to refuse payment.

Banker paying in good faith and without negligence cheque crossed generally to a banker, or cheque crossed specially to the banker to whom it is crossed, to be entitled to same rights, and placed in same position as if the amount of the cheque had been received by true owner.

Banker paying cheque contrary to provisions of Act to be liable to true owner.

Person taking cheque crossed generally or specially and in either case bearing the words "not negotiable" cannot give a better title to cheque than that which person from whom he obtained it had.

**FACTORS ACTS :** { 6 Geo. IV. c. 94 (1825).  
5 & 6 Vict. c. 39 (1842).

Where goods or documents of title to goods are pledged as security for *present* or *future* advances, with knowledge that they are not the property of the factor, but without notice that he is acting without authority, in such case the pledgee acquires an absolute lien.

Where goods are pledged by a factor, *without notice* to the pledgee that they are the property of another, as security for a *pre-existing debt*, the pledgee acquires the same rights as the factor had.

5 & 6 Vict.  
c. 39, s. 2.

Where a contract to pledge is made in consideration of the delivery of goods or documents of title upon which the person delivering them had a lien for a previous advance (which is deemed a contract for a present advance), the pledgee acquires an absolute lien to the extent of the value of the goods given up.

*Note.*—The common law rule was that the usual employment of a factor being to sell, he could not *pledge* the goods entrusted to him. This being considered prejudicial to credit by mercantile men, it was altered by 4 Geo. IV. c. 83, amended by 6 Geo. IV. c. 94.

The Acts extend only to mercantile transactions, and only to persons entrusted as factors or agents, and not therefore to a person whose employment does not usually imply a power of sale, as *e.g.* a wharfinger. Smith, *Mercantile Law*, 9 ed. pp. 128 *sqq.*; 2 Chitty, *Stat.* 56.

**LORD TENTERDEN'S ACT: 9 Geo. IV. c. 14 (1828).**

In actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise shall be deemed sufficient evidence of a new or continuing contract so as to take a case out of the Statute of Limitations [21 Ja. I. c. 16, *ante*], unless it be made in writing, signed by the party chargeable.

Acknowledgments of debt.  
Sect. 1.

An acknowledgment by a joint contractor not to bind the others.

No action to be brought against any person on representation as to the character or credit, etc., of any other person, in order that such other person may obtain credit, money, or goods, unless such representation is in writing, signed by the party chargeable.

Representations.  
Sect. 6.

Section 17 of the Statute of Frauds (*ante*, p. 7) shall extend to all contracts for the sale of goods of £10 and upwards, notwithstanding that the goods are to be delivered at some future time.

Executory contracts of sale.  
Sect. 7.

*Note.*—The full title of this Act is “An Act for rendering a written Memorandum necessary to the Validity of certain Promises and Engagements.”

**CARRIERS ACT: 11 Geo. IV. & 1 Will. IV. c. 68 (1830,**

Mail contractors, coach proprietors, and carriers not to be liable for loss of certain goods (gold, silver, precious stones, jewellery, watches, clocks, trinkets, bills, notes, securities, stamps, maps, writings, title deeds, paintings, engravings, pictures, plate or plated goods, glass, china, silk, fur or lace) above the value of £10 unless delivered as such and increased charge paid and accepted. To entitle to increased charge carrier must affix notice thereof in office or warehouse.

Nothing in Act to affect special contract between carrier and consignor.

Parties who have paid extra charges are entitled to recover such charges as well as damages in case of loss.

Notwithstanding the Act, carrier to remain fully responsible for felonious acts of himself and servants.

Carrier not to be concluded as to value of package by declaration of consignor, but only liable to extent of damage or loss actually proved by the latter.

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**RAILWAY AND CANAL TRAFFIC ACT:**

17 & 18 Vict. c. 31 (10th July, 1854).

Railway and canal companies to make arrangements for receiving and forwarding traffic without unreasonable delay and without partiality.

Company to be liable for neglect or default in the carriage of goods, notwithstanding notice to the contrary.

Unless value declared and extra payment made company not to be liable for loss or injury to horse beyond £50; to neat cattle beyond £15 per head; to sheep or pigs beyond £2 per head.

Proof of value to be on person claiming compensation.

No special contract between carrier and consignor to be binding unless signed by latter or his agent.

*Note.*—The fair interpretation to be put upon the latter of these enactments has been decided to be as follows: All notices or conditions made by a railway company are null and void in so far as they go to release the company from liability for loss or injury to goods occasioned by the neglect or default of the company or its servants. But this is not to prevent the company from making any such conditions as shall be held by a court or judge to be reasonable, and when such special terms are signed by the person sending the goods.<sup>1</sup> See Smith, *Mercantile Law*, 9 ed. pp. 279–286.

<sup>1</sup> *Per Jervis, C.J., London and North Western Rail. Co. v. Dunham*, 18 C. B. 826; affirmed by Exchequer Chamber.

**INTERPLEADER ACT: 1 & 2 Will. IV. c. 58 (1831).**

In action of assumpsit, debt, detinue, or trover upon application of defendant, after declaration and before plea, stating that he claims no interest, but that a third party claims right to subject matter of action, Court may order third party to appear and maintain or relinquish his claim, in the meantime proceedings to be stayed.

Court or judge may decide the issue in a summary manner; such decision to be final.

Third party not appearing, his claim may be barred. When claim is made to goods taken or about to be taken in execution, the sheriff may interplead and Court may direct an issue between claimant and judgment creditors.

*Note.*—By the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126, s. 12 foll.) interpleader may be granted though titles have not a common origin, but are adverse to and independent of one another. See also Judicature Acts, Order I. r. 2. Indermaur's Man. of Practice, 67, 68.

**FURTHER AMENDMENT OF THE LAW, ETC.:**  
**3 & 4 Will. IV. c. 42 (1833).**

*Action by Executors.*

An action may be maintained by the executors or administrators of any person deceased for any injury committed against the real estate of such person within six months before his death, and if such action is brought within one year after his death. Injury to land.  
Sect. 2.

And an action may be brought against the executors, etc., of a deceased person for any wrong committed by him in his lifetime against the real or personal property of another, if it was done within six months before his death, and the action be brought within six months after it.

*Interest.*

A jury may allow interest at the current rate upon debts or sums payable by virtue of a written instrument at a certain time, or if otherwise then from the time when demand of payment shall have been made in writing giving notice that interest will be claimed from the date of such demand. Sect. 23.



**TO IMPROVE LAW OF EVIDENCE:**  
**6 & 7 Vict. c. 85 (1843).**

Witnesses not to be excluded from giving evidence by incapacity from crime or interest.

Act does not extend to parties to action or suit (except that defendant may be examined in equity), or to lessor of plaintiff, or tenant of premises sought to be recovered in ejectment, or landlord in whose right defendant in replevin makes cognizance [or husband or wife of such persons respectively].<sup>1</sup> Nor does the Act extend to alter the law with regard to wills (7 Will. IV. & 1 Vict. c. 26).

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**AMENDING LAW OF EVIDENCE:**  
**14 & 15 Vict. c. 99 (1851).**

Parties.

Parties to a suit or action to be competent and compellable to give evidence.

Persons charged with a criminal offence not to be competent or compellable to give evidence against themselves, nor any husband or wife to give evidence against each other in any criminal proceeding.

Inspection.

Common Law Courts authorised to compel inspection of documents wherever equity would grant discovery.

Foreign acts  
of state, &c.

Foreign and colonial acts of state, judgments, and legal documents to be provable by certified copies without proof of seal or signature.

Conviction or acquittal of person charged may be certified under hand of the clerk of Court, and this shall be a sufficient proof.

<sup>1</sup> Repealed by 16 & 17 Vict. c. 83.

Examined or certified copies or extracts of public documents to be admissible in evidence, where the original is of such a nature as to be admissible on its mere production from proper custody. Certifying a false document by any officer is to be a misdemeanour. Persons forging seal, stamp, or signature of documents to which the Act applies, or wilfully tendering such document in evidence, to be guilty of felony.

Every court, judge, justice, commissioner, or arbitrator having by law or consent authority to receive evidence may administer an oath. Oath.

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**EVIDENCE AMENDMENT ACT, 1853:**

**16 & 17 Vict. c. 83.**

Husbands and wives of parties to be admissible witnesses, except in criminal cases [and in cases of adultery: Repealed 32 & 33 Vict. c. 68]. Husband or wife not to be compellable to disclose any communication made by the one to the other during the marriage.

*Note.*—The full title of this statute is “An Act to amend an Act 14 & 15 Vict. c. 99.” The former Act was not construed to render a husband or wife competent to give evidence for or against one another unless the wife was a party to the record, and accordingly the present Act was passed.

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**EVIDENCE FURTHER AMENDMENT ACT:**

**32 & 33 Vict. c. 68 (9th Aug. 1869).**

Parties to action for Breach of Promise of Marriage Evidence.  
to be competent to give evidence. Plaintiff not, however, to recover unless his or her testimony be corroborated by some other material evidence.

Parties and their husbands and wives to be com-

petent to give evidence in suits for adultery. But no witness, whether party or not, to be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness shall already have given evidence in disproof of alleged adultery.

**Oath.**

Person objecting to take oath or being objected to as incompetent to take oath, may be allowed to make promise and declaration in prescribed form.

Person who, having made such promise and declaration, gives false evidence, may be convicted of perjury.

*Note.*—Competency of Witnesses :—6 & 7 Vict. c. 85 (Lord Denman's Act) removed incapacity from *crime or interest*. 14 & 15 Vict. c. 99 (Lord Brougham's Act), renders the *parties* to a civil proceeding generally competent and compellable to give evidence. 32 & 33 Vict. c. 68 (Evidence Further Amendment Act, 1869), removes the exception as to proceedings instituted in consequence of adultery or breach of marriage.

**BANKERS' BOOKS EVIDENCE ACT, 1876:**

**39 & 40 Vict. c. 48.**

Entries in account books of any bank are *prima facie* evidence on proof by affidavit of one of the officers of the bank that these are the ordinary books, and that the entries have been made in the usual course of business, and that such books are in custody of the bank. This does not apply where the bank is itself a party.

Copies of such entries may be proved without production of originals by affidavit of a person who has examined the same. Notice must be given to opposite party, who are at liberty to inspect the originals.

Judge may give order to inspect and take copies of entries. No bank is compellable to produce its books except by special order of a judge.

**LIBEL ACT: 6 & 7 Vict. c. 96 (1843).**

Offer of apology admissible in evidence in mitigation of damages.

In action against newspaper for libel defendant may plead that it was inserted without actual malice or gross negligence, that a full apology has been published, and he may pay money into court as amends.

Publishing or threatening to publish a libel, or offering to abstain from publishing, or to prevent the publishing anything with intent to extort money or obtain an appointment, punishable by imprisonment with or without hard labour.

Person maliciously publishing defamatory libel to be liable to fine or imprisonment for one year ; and if he knew the libel to be false, to fine or imprisonment for two years.

On indictment for defamatory libel, the truth of the alleged libel may be inquired into, but does not amount to a defence, unless it was for public benefit that it should be published.

Defendant may prove publication to have been made without his authority, consent, or knowledge, and that it did not arise from want of care on his part.

On prosecution for private libel, defendant entitled to costs on acquittal.

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**LORD CAMPBELL'S ACT: 9 & 10 Vict. c. 93 (1846).**

**AMENDMENT ACT: 27 & 28 Vict. c. 95 (1864).**

Any person causing the death of another by such 9 & 10 Vict.  
wrongful act or neglect, as would have entitled the  
person injured to an action for damages, if death had  
not ensued, shall be liable, notwithstanding the death  
of the person injured.

Such action to be for benefit of wife, husband,  
parent, or child of deceased and to be brought by  
executor or administrator: damages to be divided as  
jury direct.

Only one action to lie, and this to be brought within  
twelve months. Plaintiff to deliver with declaration  
full particulars of person or persons for whose benefit  
action is brought.

By the Amending Act, if there be no executor, or if 27 & 28 Vict.  
the executor do not sue within six months after death  
of the deceased, such action may be brought by the  
beneficiaries.

**BILLS OF SALE ACT, 1878: 41 & 42 Vict. c. 81.**

Every bill of sale of personal chattels (which shall include trade machinery) is to be registered, *i.e.*, filed in Queen's Bench, within *seven* days, and must set forth the consideration for which it is given, or it will be void against the trustees or assignees of the maker, or against execution creditor.

The bill must be attested by a solicitor and accompanied by an affidavit of the time of making, and residence and occupation of the maker, and of every attesting witness.

This registration must be renewed every *five years* by an affidavit stating the bill to be an existing security.

When there is more than one bill of sale, they are to have priority in the order of their registration.

The Act comes into operation 1 Jan. 1879.

*Note.*—The full title is "An Act to consolidate and amend the law for preventing Frauds upon Creditors by Secret Bills of Sale of Personal Chattels." It repeals the previous Acts of 1854 and 1866 (17 & 18 Vict. c. 36; 29 & 30 Vict. c. 96), by which, *inter alia*, twenty-one days are allowed for registration.

**MERCANTILE LAW AMENDMENT: 19 & 20 Vict. c. 97**  
(29th July, 1856).

Writ of execution not to bind goods as against purchaser for valuable consideration without notice that such writ was in hands of the sheriff. Writ of execution.

In action for specific goods, Court may order execution to issue for delivery of goods themselves without option of paying damages assessed. If goods cannot be found, sheriff to distrain the defendant by his lands and chattels till he deliver them,—or, at option of plaintiff, to cause to be made of the defendant's goods the assessed value of the goods detained. Specific delivery of goods sold.

In guarantee required by 29 Car. II. c. 3, s. 4 (*ante*, p. 7) to be in writing, the consideration need not appear in writing. Consideration for guarantee.

Guarantee to or for a firm to cease upon a change taking place in one or more of the persons constituting it, unless intention of parties that such guarantee shall continue binding appear by express declaration, or by necessary implication. Guarantee to or for firm.

A surety who discharges the liability of his principal to be entitled to assignment of all securities held by creditor. Surety.

Acceptance of Bill Inland or Foreign to be in writing, and signed by acceptor or his agent. Acceptance.

No action to be brought on accounts between merchants but within six years after cause of such action. Absence beyond seas or imprisonment of creditor not to be a disability for purpose of extending time allowed by the Statutes of Limitation. Limitation.

Period of limitation to run as to joint debtors in the kingdom, though some are beyond the seas. Judgment recovered against joint debtors no bar to proceedings



against others beyond seas on their return. Part payment by one co-contractor or co-debtor, whether the agreement be joint or joint and several, not to prevent the Statutes of Limitations from running in favour of other co-contractors or co-debtors.

*Note.*—By a declaratory Act, the Bills of Exchange Act, 1878 (41 Vict. c. 13), it is declared that “An acceptance of a bill of exchange is not to be deemed insufficient under the Mercantile Law Amendment Act only because it consists merely of the signature of the drawee written on the bill.”

**INNKEEPERS ACT: 26 & 27 Vict. c. 41 (1863).**

Innkeeper not to be liable for loss of or injury to goods brought to his inn to a greater amount than £30, except where theft, loss, or injury has occurred through wilful act, default, or neglect of innkeeper or his servants; or where goods have been deposited expressly for safe custody.

Innkeeper refusing to receive for safe custody to lose benefit of the Act; but he may require goods to be deposited in box, fastened and sealed by depositor. Act does not extend to horses or other animals, harness, or carriage.

To entitle innkeeper to benefit of Act, copy of first section to be exhibited at entrance of inn.

**INJURIES TO CATTLE AND SHEEP BY DOGS :**  
**28 & 29 Vict. c. 60 (1865).**

Owner of dog to be liable for injury done by it to cattle or sheep, without plaintiff being required to show a previous mischievous propensity, or the owner's knowledge of such propensity, or owner's neglect.

Where amount of damages claimed does not exceed £5, they are recoverable summarily before a Justice of the Peace in petty sessions.

Occupier of house where dog is kept to be deemed owner unless he can prove the contrary.

*Note.*—This Act upsets the old doctrine that the owner was not responsible for the damage done by his dog to another man's sheep or cattle, unless he could be proved to have known (*scienter*) that his dog had previously so acted. *Scienter* must still be shown in the case of damage other than that to cattle and sheep ; but it has been decided that "cattle" in the Act includes horses.

**PARTNERSHIP ACT: 28 & 29 Vict. c. 96 (1865).**

The following persons are not to be considered partners :—

Lender of money to a trader upon contract to receive share of profits.

Servant or agent remunerated by share of profits.

Widow or child of deceased partner receiving annuity.

Vendor of goodwill of business receiving share of profits by way of remuneration.

But if such trader become bankrupt, or compound with his creditors, or die insolvent, the lender of such loan and the vendor of such goodwill shall be postponed to the other creditors.

**COUNTY COURT ACT, 1867: 30 & 31 Vict. c. 142  
(20th Aug. 1867).**

Plaint may be entered in County Court within district of which defendant or one of defendants dwells or carries on business, or by leave of judge or registrar in County Court of district dwelt or carried on business within six months before action brought, or by like leave in County Court of district of which suit wholly or in part arose. Proceedings commenced in a metropolitan County Court to be continued therein, if defendant reside or carry on business in district of any one of the metropolitan County Courts.

Where in action of contract claim endorsed on writ does not exceed £50, or where reduced to that sum by payment or set-off, action may be removed to County Court on order of judge in chambers.

Proceedings in Courts of Chancery which might have been commenced in County Court may be transferred thereto on order of judge in chambers.

**Costs.**

County Courts jurisdiction in Equity extended to suits for specific performance of, or for the reforming, delivering up, or cancelling of any agreement for sale, purchase, or lease of property, where in case of sale or purchase the purchase money, or in case of lease the value of the property, does not exceed £500. Defendant in action for tort, brought in a superior Court, may make affidavit that plaintiff has no visible means of paying the defendant's costs, should a verdict not be found for the plaintiff. Whereupon the judge may order that unless plaintiff shall give security for defendant's costs, or satisfy the judge that he has cause of action fit for superior Courts, the cause shall be remitted to County Court.

County Court to have jurisdiction in actions of ejectment, and questions relating to title, where neither value of land nor rent payable exceeds £20 per annum, unless defendant show that title to lands of greater value would be affected by the decision.

Trustees may pay trust funds, where below £500, into court, to be invested in name of registrar in Post Office Savings Bank.

No action which can be brought in County Court to be brought in hundred or other inferior Court. Costs.

Where action is brought in inferior Court which might have been brought in County Court, no costs to be recovered except what would have been allowed in County Court.

If in action in superior Courts, plaintiff recover sum not exceeding £20 in action on contract, or £10 in action on tort, he shall not be entitled to costs unless Judge certify that there was sufficient reason for bringing such action in superior Court.

No action to be brought in any Court to recover money alleged to be due in respect of sale of Ale, Porter, Beer, Cider, or Perry consumed on the premises. General provision as to sale of beer, &c.



1869: 32 & 33 Vict. c. 62 (9th Aug. 1869).

*Abolition of Imprisonment for Debt.*

for debt to be abolished, except for : Imprisonment  
payment of penalty or sum in nature after judg-  
ment.  
penalty in respect of contract.  
payment of sum recoverable sum-

trustee ordered by Court to pay.

solicitor when ordered to pay costs  
to pay a sum of money as officer of  
the order.

payment of income for benefit of cre-  
Court of Bankruptcy.

in these cases for longer than one

imprisoned for six weeks or until pay-  
under County Court judgment, or  
superior Court not above £50, where  
on proof that debtor has, or has had  
means to pay. Judge in Chambers  
County Court Judge must make  
showing ground for making. Im-  
case not to operate as satisfaction

50 and upwards, the defendant being Imprisonment  
land, may be arrested and imprisoned on mesne pro-  
cess.  
less and until he give security not to  
without leave of Court, the plaintiff  
that he has good cause of action, and  
if the defendant would materially pre-  
secution of suit.

against debtor's property may be is-



**JUDGMENTS EXTENSION ACT: 31 & 32 Vict. c. 54  
(1868).**

Judgments obtained in the Courts of England, Ireland, and Scotland, may not only be registered in the Court of Registry of the country in which they were obtained, but also by certificate in that of either of the other two countries.

And the Court in which the judgment is registered will have the same jurisdiction, as far as relates to execution, as it would have if the judgment were its own.

The Courts of Common Pleas at Westminster and Dublin, and the Court of Session of Scotland, are the Courts of Registry in the three countries respectively.

**DEBTORS ACT, 1869: 32 & 33 Vict. c. 62 (9th Aug. 1869).**

**PART I.—*Abolition of Imprisonment for Debt.***

Imprisonment for debt to be abolished, except for :

(1) Default in payment of penalty or sum in nature of penalty, except penalty in respect of contract.

Imprisonment  
after judg-  
ment.

(2) Default in payment of sum recoverable summarily.

(3) Default by trustee ordered by Court to pay.

(4) Default by solicitor when ordered to pay costs for misconduct, or to pay a sum of money as officer of the Court making the order.

(5) Default in payment of income for benefit of creditors on order of Court of Bankruptcy.

No imprisonment in these cases for longer than one year.

Debtor may be imprisoned for six weeks or until payment of debt due under County Court judgment, or judgment of superior Court not above £50, where ordered by Court, on proof that debtor has, or has had since judgment, means to pay. Judge in Chambers may commit; but County Court Judge must make order in open Court showing ground for making. Imprisonment in this case not to operate as satisfaction of debt.

In action for £50 and upwards, the defendant being about to quit England, may be arrested and imprisoned for six months, unless and until he give security not to quit England without leave of Court, the plaintiff making affidavit that he has good cause of action, and that the absence of the defendant would materially prejudice him in prosecution of suit.

Imprisonment  
on mesne pro-  
cess.

Sequestration against debtor's property may be is-

sued by Court of Equity as though debtor had been arrested.

**PART II.—*Punishment of Fraudulent Debtors.***

Bankrupt to be guilty of misdemeanour, and liable to two years imprisonment, (unless the jury are satisfied no fraud was intended) :

(1) If he do not make true discovery of the disposition of all his property to trustee.

(2) If he do not deliver up all property which law requires to be delivered up, and all documents relating to his affairs.

(3) If he make material omission in statement of affairs.

(4) If knowing false debt to have been proved, he omit for one month to inform trustee.

(5) If after presentation of petition, or four months previously, he conceals or removes goods to value of £10 or upwards ; or conceals, destroys, or falsifies any document relating to his affairs, or is privy to such acts on the part of others ; or if he endeavours to account for property by fictitious losses or expenses.

(6) If within four months before petition he has obtained property on credit by false representations ; or, being a trader, pawns or pledges property obtained on credit.

(7) If by false representation or fraud he endeavours to obtain consent of creditor or creditors to any agreement under his bankruptcy or liquidation.

Bankrupt, or person whose affairs are in liquidation absconding, or attempting to abscond, with property amounting to £20 or upwards, to be guilty of felony, and liable to two years' imprisonment (unless jury are satisfied he had no intent to defraud).

Any person obtaining credit under false pretences, or making gift or transfer to defraud creditors, or con-

cealing or removing property within two months before date of unsatisfied judgment or order for payment ; or any creditor making false claim under Bankruptcy Act, to be guilty of misdemeanour, and liable to one year's imprisonment.

Debtor making arrangement or composition remains liable for unpaid balance of debt incurred by fraud.

Mayors, aldermen, town councillors, and justices becoming bankrupt or arranging with creditors to be disqualified for office. Disqualifi-  
cation.

[Bankruptcy Disqualification Act, 34 & 35 Vict. c. 50. Bankrupt peers to be disqualified from sitting in House of Lords until Order of Discharge is granted.]

PART III.—*Warrants of Attorney, Cognovits, and Orders for Judgment.*

Warrant of Attorney to confess judgment, or *cognovit actionem* given by any person, to be executed in presence of solicitor, who shall inform him, before its execution, of the nature and effect of the document. The solicitor to subscribe his name as witness.

Warrant of Attorney to confess judgment, or *cognovit actionem*, to be deemed fraudulent and void unless filed in Court of Queen's Bench within 21 days after execution.

Judge's order made by consent, in which defendant authorises plaintiff to sign judgment or to issue execution, to be filed as above.



**BANKRUPTCY ACT, 1869: 32 & 33 Vict. c. 71 (1869).**

Creditor to amount of £50, or creditors to that amount in aggregate, may present petition, alleging an act of bankruptcy.

*Acts of Bankruptcy.*

(1) Assignment by debtor of his property for benefit of creditors generally.

(2) Fraudulent transfer by debtor of his property.

(3) Departure from England; departure, if a trader, from dwelling-house; keeping house, or suffering out-lawry with intent to delay or defraud creditors.

(4) Filing of declaration of inability to pay debts.

(5) Seizure and sale of goods for debt of £50 or above under execution.

(6) Neglect of payment on debtors' summons.

(Debtor's summons may be granted to creditor proving a debt sufficient to support petition of bankruptcy. Summons to state that on failure of payment a petition will be presented against him).

But to ground adjudication, act of bankruptcy must have been committed within six months previous to petition.

Bankruptcy to relate back to act of bankruptcy on which order of adjudication was made.

After order of adjudication, Court may summon general meeting of creditors, at which they shall—

(1) Appoint trustee and declare what security he shall give.

(3) Appoint committee of inspection, not exceeding five persons, all to be creditors qualified to vote.

(4) Give directions as to administration of property by trustee.

*Bankrupt's Property Divisible among Creditors.*

(1) All property vested in him at commencement of bankruptcy or devolving on him during its continuance.

(2) Powers which bankrupt might exercise for his own benefit.

(3) All goods and chattels being at commencement of bankruptcy in the possession, order, or disposition of bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels bankrupt is reputed owner.

*Bankrupt's Property not Divisible among Creditors.*

(1) Property held by him on trust for another.

(2) Tools of trade, necessary wearing apparel, and bedding to value not exceeding £20 in the whole.

*Constitution of First Meeting of Creditors.*

(1) Meeting to be presided over by Registrar.

(2) Those only entitled to vote who have proved their debts.

(3) None to vote in respect of unliquidated or contingent debt.

(4) Secured creditor only entitled to vote in respect of balance after deducting value of security. But if he give up security to trustee he may prove for whole debt.

(5) Votes may be given personally or by proxy.

(6) *Ordinary resolution* to be decided by majority in value; *special resolution* by majority in number and three-fourths in value.

Until appointment of trustee property to vest in Registrar. Trustee as soon as may be to take posses-

*Leading Statutes Summarised.*

sion of all property, deeds, books, and documents. He may disclaim onerous property of any kind, unless person entitled in default having required him to decide, he shall neglect to do so within 28 days. Disclaimed property in no case to revert to bankrupt.

*Powers of Trustee.*

- (1) To receive and decide on proof of debts.
- (2) To carry on business as far as necessary for winding-up.
- (3) To bring or defend any action relating to estate.
- (4) To bar entail as bankrupt might under Fines and Recoveries Act.
- (5) To execute deeds and other necessary instruments.
- (6) To sell property of bankrupt by auction or private contract.
- (7) To give receipts, which shall effectually discharge payer.
- (8) To prove, rank, claim, and draw dividend in bankruptcy of any debtor of the bankrupt.

With sanction of Committee of Inspection, trustee may—

- (1) Mortgage or pledge property of bankrupt.
- (2) Refer disputes to arbitration and compromise debts.
- (3) Divide in existing form amongst the creditors property which cannot be advantageously sold.

Trustee may appoint bankrupt himself to carry on business for benefit of creditors.

With sanction of special resolution of creditors, trustee may accept any composition offered by bankrupt, or assent to any general scheme of arrangement.

Trustee not to employ solicitor without consent of committee; but if he be himself a solicitor, he may contract for remuneration for professional services.

Following debts to have priority ; between themselves such debts to rank equally :— Preferential debts.

(1) Rates which became due within twelve months previous to order of adjudication and taxes assessed on him up to the 5th of April next before adjudication, and not exceeding one year's assessment.

(2) Wages or salary of clerk or servant, for not more than 4 months, and not exceeding £50. Wages of workman or labourer for not more than 2 months.

Apprentice is discharged from his indentures. Trustee may afford reasonable compensation or transfer indenture.

Landlord may, before or after commencement of bankruptcy, distrain for rent ; but if after, distress is only available for one year's rent due prior to order of adjudication. But landlord may prove under bankruptcy for balance.

#### *Discharge of Bankrupt.*

At close of bankruptcy, or during its continuance, bankrupt may be discharged if either (1) A dividend of 10s. in the pound has been paid, or (2) If creditors by special resolution declare that his failure to pay 10s. in the pound has arisen from unavoidable circumstances.

Discharge releases from all debts, unless incurred by fraud or breach of trust, and except (1) Debts due to crown, or (2) Debts with which he stands charged for offence against revenue, or on bail bond. But he may be discharged from these by consent of Commissioners of Treasury.

#### *Undischarged Bankrupt.*

Not to have debt enforced against him until expiration of three years. If by that time he has paid in all



*Leading Statutes Summarised.*

a dividend of 10s. in the pound, he is entitled to his discharge. If not discharged at end of three years, unpaid balance to be deemed a judgment debt, subject to rights of persons who have become creditors since the bankruptcy.

*Liquidation by Arrangement.*

**Liquidation.** Debtor unable to pay his debts may summon a general meeting of his creditors, and such meeting may by special resolution declare that debtors' affairs are to be liquidated by arrangement, and not in bankruptcy. At same meeting, or another held within a week, trustee may be appointed with or without committee of inspection. Names of trustee and committee, if any, to be presented to registrar for registry.

Trustee under liquidation to have same powers and duties as trustee under bankruptcy, and all provisions of Act, as far as applicable, to be applied to liquidation by arrangement. Appointment of trustee to be equivalent to and substitute for presentation of petition. Court may for any sufficient cause adjudge debtor whose affairs are under liquidation a bankrupt.

*Composition with Creditors.*

**Composition.** Creditors of debtor may, without proceedings in bankruptcy, by an *extraordinary resolution*, resolve to accept composition in satisfaction of debts.

*Extraordinary Resolution*

Is a "Special Resolution" (p. 35) of creditors assembled in general meeting, confirmed by a majority in number and value at subsequent meeting held at interval of not less than seven, or more than fourteen days. In calculating this majority, creditors whose

debts amount to sums not above £10 to be reckoned in majority in value, but not in majority in number. Value of debts of secured creditors to be estimated in same way.

Provisions of composition may be enforced by Court on motion.

**WAGES ATTACHMENT ABOLITION ACT, 1870:****33 & 34 Vict. c. 30.**

- S. 1.       No order for the attachment of the wages of any servant, labourer, or workman to be made by Judge of any Court of Record or Inferior Court.

*Note.*—The law as to attachment of debts by garnishee orders is now regulated by the Judicature Acts, Order XLV. ; Indermaur's Man. of Practice, 83.

**LODGERS' GOODS PROTECTION ACT: 34 & 35 Vict.  
c. 79 (1871).**

In case of distress by a superior landlord, a lodger may serve such landlord, or the person employed by him, with a declaration that the immediate tenant has no right or interest in his goods. He must also state whether he owes any rent as lodger : and this he may pay to the superior landlord, and it shall be deemed a valid payment of his rent. He must also annex an inventory of such goods.

To subscribe such declaration and inventory, knowing them to be false in any material particular, is a misdemeanour.

If the landlord levies after this, the distress will be illegal, and the lodger may apply to a justice of the peace for an order of restoration ; and may also maintain an action at law against such landlord.

**JUDICATURE ACTS, 1873, 1875, 1877: 36 & 37 Vict. c. 66,  
38 & 39 Vict. c. 77, and 40 Vict. c. 9.**

Act 1873,  
sec. 25, sub-  
s. 1-11.

In administration of assets of insolvent estates, and in winding up of insolvent Companies under Companies Acts 1862 and 1867, rules of the Law of Bankruptcy for the time being to prevail.

Statutes of Limitation to be inapplicable to express trusts [Repealed by 37 & 38 Vict. c. 57, as from Jan. 1. 1879].

Estate for life without impeachment of waste not to confer right to commit equitable waste.

To be no merger by mere operation of law which would not be recognized in equity.

Mortgagor entitled for time being to possession, may sue for such possession or for rents and profits in his own name only.

Choses in action to be assignable by writing with due notice.

Stipulations not to be deemed of the essence of a contract which were not so regarded in Courts of Equity.

Mandamus or Injunction to be granted or receiver appointed by interlocutory order where Court deems just.

Rules of Court of Admiralty to prevail in cases of damage by collision at sea.

Rules of Equity to prevail in questions relating to the custody and education of infants.

And generally, where the Rules of Law and of Equity conflict, the latter shall prevail.

*Note.*—Above are noted only the changes made in substantive law by the Judicature Acts. Matters of procedure, etc., are too complicated to be dealt with here, and the student will consult some work on the Acts themselves. Indermaur's *Man. of Practice*, 1878, is brief and very clear.

**INFANTS RELIEF ACT, 1874: 37 & 38 Vict. c. 62**  
(7th Aug. 1874).

All contracts entered into by infants, except contracts for necessities, and all accounts stated with infants to be absolutely void.

No action to be brought on promise after full age to pay debt contracted during infancy, or upon ratification after full age of promise or contract made during infancy, whether there be or be not any new consideration for such promise or ratification after full age.

## CRIMINAL.

### TREASON FELONY ACT: 11 Vict. c. 12.

EVERY one is guilty of felony who intends, and expresses such intention by any overt act, to

- (1) Depose the sovereign :
- (2) Levy war against the sovereign in the United Kingdom in order to force her to change her counsels, or to force or intimidate Parliament :
- (3) Move any foreigner to invade the United Kingdom or any of the sovereign's dominions :

Punishment : Penal servitude for life as maximum.

*Note.*—Comp. Stephen's Digest of Crim. Law, Art. 62, with notes, and Note V., p. 338.

### ACCESSORIES: 24 & 25 Vict. c. 94 (1861).

Accessories to felony before the fact or after the fact may be indicted as such, or for substantive felony, whether, in the latter case, the principal felon has or has not been convicted.

Accessory before the fact to be punished as if he were a principal felon.

Accessory after fact to be imprisoned for term not exceeding two years.

Abettor in misdemeanour to be tried, indicted, and punished as a principal offender.

Accessory to felony within Admiralty jurisdiction to be a felon. Venue to be county or place in which such person is indicted.

*Note.*—Comp. Stephen, Digest of Crim. Law, pp. 27–28.

**LARCENY ACT: 24 & 25 Vict. c. 96.**

*Three* different acts of larceny committed within *six months* may be charged in the same indictment. Distinct acts,  
s. 5.

Bailee fraudulently taking and converting to be guilty of larceny, although he do not break bulk. Bailee.

Larceny of cattle or other animals to be felony: Animals.

Deer (ss. 12-16); hares and rabbits (s. 17); dogs (ss. 18-20); domestic animals that are not at common law subjects of larceny (s. 21); skins (ss. 11, 22); doves or pigeons (s. 23); fish (s. 24); oysters (s. 26); tackle of persons unlawfully fishing may be seized (s. 25).

Person fraudently stealing, destroying, or obliterating any valuable security, or judicial or public document, punishable as if he had stolen the chattel to which it relates. Written instruments,  
&c., ss. 27, 28.

Person treating in the same way, or *concealing*, any document of title to land liable to penal servitude for five years; or in case of a will for life.

Larceny of things attached to soil to be felony punishable as simple larceny. Things attached to soil.

Stealing ore from mine, or concealing or removing it with intent to defraud, punishable by two years' imprisonment. Mines.

Robbery with violence punishable by penal servitude for life: robbery from person by fourteen years' penal servitude; assault, with intent to rob, by five years.

Attempts to extort money by threats, menaces, or unlawful restraint, penal servitude for life or not less than five years; or two years' imprisonment. Threats,  
ss. 44-49.

Sacrilege and burglary punishable by penal servitude for life. Sacrilege,  
burglary, &c.,  
ss. 50-59.

Larceny in dwelling-house of money, etc., value of £5, or of any sum if threats be employed, punishable Larceny in house, &c.,  
ss. 62-66.



by fourteen years' penal servitude. Larceny of goods in process of manufacture or of goods on vessel or wharf by fourteen years' penal servitude.

Embezzlement, s. 67.

Larceny by clerk or servant punishable by fourteen years' penal servitude.

Larceny by lodgers by two years' imprisonment.

Frauds by agents, bankers, or factors by seven years' penal servitude.

False pretences, ss. 88-90.  
Receiving, ss. 91-98.

Obtaining money by false pretences punishable by penal servitude for five years.

Receiving stolen goods, where the stealing amounts to felony, punishable by fourteen years' penal servitude; where it amounts to misdemeanour, by seven years.

Restitution, s. 100.

After conviction of felony, or misdemeanour, Court may order restitution of stolen property, except in case of valuable security held *bonâ fide* for valuable consideration without notice.

Corruptly taking reward for restitution of stolen property punishable by seven years' penal servitude.

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#### **MALICIOUS INJURIES TO PROPERTY ACT:**

**24 & 25 Vict. c. 97.**

Penal servitude for life.

Following crimes to be punishable by penal servitude for life:—

(1) Maliciously setting fire to building, mine, or stack of corn, etc.; (2) firing, destroying, or casting away vessel, finished or unfinished; (3) obstructing railway line, removing rails or signals; (4) removing sealight or signal; (5) maliciously destroying or damaging dwelling-house by explosion of gunpowder, etc.; (6) sea-bank, river dam, wharf, sluice, etc.; (7) bridge, aqueduct, or viaduct; (8) silk, woollen, cotton, linen, hair, mohair, or alpaca goods in process of manufacture, or machinery connected therewith; (9) riotously demolishing building.

Following crimes punishable by fourteen years' penal servitude :—

Fourteen years' penal servitude.

(1) Maliciously *firing* anything in, against, or under building, etc., (2) crops, plantations, or heaths; (3) unlawfully killing or wounding cattle or other animals; (4) destroying wrecked vessel or goods therein; (5) maliciously *attempting* to fire building or anything in, against, or under building or any mine; (6) to fire, cast away, or destroy vessel; (7) maliciously placing gunpowder in or near building or ship with intent to damage it or goods and chattels therein.

To be punishable by ten years penal servitude :—

Ten years' penal servitude.

To send letter threatening to burn or destroy.

Punishable by seven years' penal servitude :—

Seven years' penal servitude.

(1) Maliciously to damage and destroy building riotously; (2) machinery, either agricultural or manufacturing; (3) airway, waterway, pit, shaft, engine, or other apparatus of mine; (4) fish in fish-pond or private fishery; (5) maliciously damaging ship otherwise than by fire or gunpowder; (6) removing buoy or other sea mark; (7) attempting to fire stack or growing crop.

Punishable by five years' penal servitude :—

Five years' penal servitude.

Destroying or damaging—(1) tree or shrub, if on land adjoining house where injury exceeds £1, if elsewhere, £5; (2) any property where no other punishment provided, where injury exceeds £5, if between 9 P.M. and 6 A.M. If in daytime, two years' imprisonment.

Punishable by two years imprisonment :—

(1) Obstructing engine or carriage on railway; (2) damaging telegraph wires and machinery; (3) making or having in possession gunpowder with intent to commit felony; (4) being accessory after fact to felony under the Act.

*Note.*—Maximum punishments are given; crimes punishable by lesser maximum terms of imprisonment than two years not referred to.

**FORGERY ACT: 24 & 25 Vict. c. 98.**

Penal servitude for life.

Punishable by penal servitude for life :—

Forging (1) Her Majesty's seals; (2) transfer of share, stock, or annuity at Bank of England or Ireland; (3) East India bond; (4) exchequer bill, bond or debenture; (5) Bank of England or other bank-note; (6) deed, bond, or writing obligatory; (7) will; (8) bill of exchange; (9) any security for money or accountable receipt; (10) Court Rolls; (11) register of births, marriages, or deaths, or inserting false entry therein; (12) falsely personating owner of share, stock or annuity at Bank of England or Ireland; (13) making false entry in books of Bank of England or Ireland; (14) obliterating, adding to, or altering crossed cheque.

Penal servitude for fourteen years.

Punishable by penal servitude for fourteen years :—

Forging (1) any debenture issued under lawful authority; (2) document relating to registry of deeds; (3) document purporting to be made by officer of any court or of Bank of England; (4) knowingly purchasing or receiving forged bank-note; (5) making or engraving plates, etc., for forging bank-notes, or Bank of England or other bank paper, or device used in any bank-note, or knowingly having such plates, etc., in possession; (6) signing bill of exchange or promissory note in name of another without lawful authority; (7) Demanding money on forged instrument.

Seven years' penal servitude.

Punishable by seven years penal servitude :—

(1) Forging name of witness to warrant of attorney to transfer stock, etc., at Bank of England and Ireland; (2) in case of clerk at Bank of England or Ireland, making out false dividend warrant; (3) making or knowingly having in possession instruments for making paper or devices peculiar to exchequer bills, bonds, and debentures; (4) forging record or any document

of Court of Record; (5) not being clerk of Court, making certificate of record, or, being such clerk, making false certificate; (6) forging any document made evidence by any Act; (7) without authority acknowledging recognizance, judgment, deed, or other instrument in name of another; (8) forging marriage licence.

Punishable by five years' penal servitude:—

Forging order or warrant of justice of peace.

Punishable by three years' imprisonment:—

Knowingly purchasing, receiving, or having in possession paper provided by Commissioners of Inland Revenue or Treasury for being used as Exchequer bonds, bills, or debentures before being stamped, signed, and issued for public use.

[Punishments mentioned are maximum punishments].

Five years' penal servitude.

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**COINAGE OFFENCES ACT: 24 & 25 Vict. c. 99.**

Punishable with penal servitude for life:—

(1) To make or counterfeit Queen's gold or silver coin; (2) to buy or sell counterfeits of Queen's gold or silver coin at lower rate of value than same imports, or to import such coin into United Kingdom; (3) to tender or utter knowingly counterfeit of gold, or silver, foreign coin, after two previous convictions; (4) to make, sell, or have in possession any instrument for the manufacture of counterfeit gold, silver, or copper coin, English or foreign; (5) to convey out of Her Majesty's Mint any instrument used in manufacture of any coin; (6) to utter or have in possession with intent to utter Queen's gold or silver coin, after one previous conviction.

Penal servitude for life.

Punishable by fourteen years' penal servitude:—

To impair, lighten or diminish Queen's gold or silver coin.

Fourteen years' penal servitude.

Seven years' penal servitude.

Punishable by seven years' penal servitude :—

(1) To have in possession knowingly filings or clippings obtained by filing or clipping Queen's gold or silver coin ; (2) to make or counterfeit Queen's copper coinage ; (3) to buy or sell, or have in possession instrument used in manufacture of counterfeit of Queen's copper coin ; (4) to buy or sell counterfeit of Queen's copper coin at lower value than same imports ; (5) to counterfeit foreign gold or silver coin, or to import such counterfeits.

Five years' penal servitude.

Punishable by five years' penal servitude :—

To have in possession with intent to utter three or more counterfeits of Queen's gold or silver coin.

Two years' imprisonment.

Punishable by two years' imprisonment :—

(1) To export from United Kingdom counterfeits of any Queen's current coin ; (2) knowingly to utter counterfeits of gold or silver, foreign coin, after *one* previous conviction ; (3) knowingly to utter counterfeit gold or silver coin, having in possession other such counterfeit coins.

One year's imprisonment.

Punishable by one year's imprisonment :—

(1) Knowingly to utter counterfeit of Queen's gold, silver, or copper coin ; (2) knowingly to utter coin, medal, etc., resembling Queen's gold or silver coin, but of less value ; (3) to counterfeit foreign copper.

Six months' imprisonment.

Punishable by six months' imprisonment :—

Knowingly to utter foreign gold or silver coin.

Fine or one month's imprisonment.

Punishable by a fine of 40s., etc. :—

To have in possession more than five pieces of counterfeit foreign gold, silver, or copper coin ; besides fine, 10s. to be payable for every such coin, one half to be given to informer, and one half to poor of parish : in default of payment, imprisonment for one month, or until payment.

[Punishments mentioned in each case are maximum punishments].

**OFFENCES AGAINST THE PERSON: 24 & 25 Vict.  
c. 100.**

Murder punishable by death.—Indictment for murder or manslaughter need not set forth means by which death was caused.

Punishable by penal servitude for life:—

Penal servitude for life.

(1) Manslaughter; (2) attempt to murder; (3) preventing wrecked person, or person on vessel in distress from saving his life; (4) doing grievous bodily harm by discharging loaded arms, or discharging such arms with intent to do grievous bodily harm; (5) attempt by choking or administering drug to render insensible with intent to commit indictable offence; (6) attempting, whether injury be effected or not, to do grievous bodily harm by explosion of gunpowder or administration of drug, whether applied to person, or, in case of gunpowder, to building or vessel; (7) obstructing railway, diverting points, or moving signals with intent to do grievous bodily harm to passengers on railway; (8) carnally knowing and abusing girl under ten years; (9) administering poison or noxious thing, or using instrument with intent to procure abortion; (10) buggery.

Punishable by fourteen years' penal servitude:—

Fourteen years' penal servitude.

(1) To force, take away, or detain against her will, with intent to marry or carnally know her. If such woman be heiress, person convicted to be incapable of taking benefit from her property.

Punishable by ten years' penal servitude:—

Ten years' penal servitude.

(1) Conspiring to murder; (2) sending letters threatening to murder; (3) administering drug or noxious thing, thereby endangering life or inflicting

grievous bodily harm ; (4) attempting to commit or assaulting with intent to commit buggery.

Seven years'  
penal servi-  
tude.

Punishable by seven years' penal servitude :—

(1) Assaulting a magistrate, officer, in execution of duty concerning preservation of vessel in distress, or vessel or goods wrecked ; (2) committing bigamy ; (3) enticing away from parent or guardian child under fourteen years of age.

Five years'  
penal servi-  
tude.

Punishable by five years' penal servitude :—

(1) Inflicting grievous bodily harm with or without arms or instrument ; (2) administering poison or noxious thing with intent to injure, aggrieve, or annoy ; (3) master neglecting to provide apprentice or servant with necessaries, or inflicting grievous bodily harm to apprentice or servant, endangering life or permanently injuring health ; (4) abandoning or exposing child under two years of age, thereby endangering life or permanently injuring health ; (5) setting man-trap, etc., calculated to destroy human life, except in dwelling houses between sunset and sunrise ; (6) assaulting and thereby doing actual harm [where conviction is not summary before magistrate] ; (7) carnally knowing and abusing girl between ten and twelve years of age ; (8) knowingly *supplying* or *procuring* poison, noxious thing, or instrument to procure abortion.

Two years'  
imprisonment.

Punishable by two years' imprisonment :—

(1) By neglect endangering safety of person on railway ; (2) furious driving ; (3) obstructing minister engaged in Divine service, or arresting ministers whilst engaged in going to or coming from performance of Divine service ; (4) assaulting with intent to commit felony ; obstructing peace officer in performance of his duty, or resisting lawful apprehension ; (5) assaulting in pursuance of unlawful combination to raise rate of wages, etc. ; (6) by false pretences procuring woman to have illicit carnal connection ; (7) indecently as-

saulting girl under twelve years of age; (8) concealing births; (9) making or having gunpowder, noxious thing, etc. with intent to commit felonies in Act mentioned.

Punishable by one year's imprisonment :—

Common assault [where conviction is not summary].

One year's  
imprisonment.

*Note.*—Offences punishable by less than one year's imprisonment not referred to. Punishments mentioned are in each case maximum punishments.



**MERCHANDISE MARKS ACT, 1862: 25 & 26 Vict. c. 88.**

It is a misdemeanor punishable by a maximum of two years imprisonment with hard labour, with a fine and imprisonment until the fine is paid, to do any of these things with intent to defraud :—

(1) Forge or counterfeit any trademark; (2) apply any such trademark to any article not being the merchandise of the person denoted by such work, or not being the particular description of merchandise denoted thereby; (3) apply any such forged trademark to anything intended for any purpose of trade or manufacture; (4) place any article in anything, or to anything to which such mark has been applied, or having the trademark of any other person; (5) cause or procure any of these offences to be committed, or aid therein.

Articles marked, and any instruments of marking, to be confiscated.

*Note.*—Stephen's Digest of Criminal Law, Art. 365 still further abridged. "The Act is," he says, "exceptionally lengthy and verbose."

**SERVANT TAKING MASTER'S CORN: 26 & 27 Vict.  
c. 103 (1863).**

It is not larceny for a servant to take his master's corn to feed his master's horses, etc. ; but it is a misdemeanor punishable before two justices of the peace by imprisonment for *three months* as a maximum, or a fine of £5, with imprisonment in default.

If upon his trial for felonious taking, a servant satisfies the jury that he took under the circumstances contemplated by this Act, he shall be punishable accordingly.

**PENAL SERVITUDE ACT, 1864: 27 & 28 Vict. c. 47.**

No person in future to be sentenced to penal servitude for less than five years. Where in any Act now in force, a less term is prescribed as a maximum, five years shall be substituted.

After a previous conviction of felony, the least sentence of penal servitude shall be seven years.

**EVIDENCE AND PRACTICE ON CRIMINAL TRIALS:**

**28 & 29 Vict. c. 18 (1865).**

Party producing witness not to be permitted to impeach his credit by general evidence of bad character; but if witness prove adverse he may be contradicted by other evidence, or by leave of judge evidence may be given that he has previously made statement inconsistent with present testimony, after he has been first asked whether he has made such statement.

Witness in cross-examination may be questioned as to previous inconsistent statements in writing or otherwise, and upon his denial proof of such statements may be given.

Witness may be questioned as to whether he has been convicted of felony or misdemeanor, and on denial proof of such conviction may be adduced.

Instrument whereof attestation is not necessary need not be proved by attesting witnesses.

Comparison of disputed with genuine writing may be made by witness, and such writings, with evidence of witnesses, may be submitted to Court and jury.

**VIOLENCE, THREATS, AND MOLESTATION:****34 & 35 Vict. c. 32 (1871).**

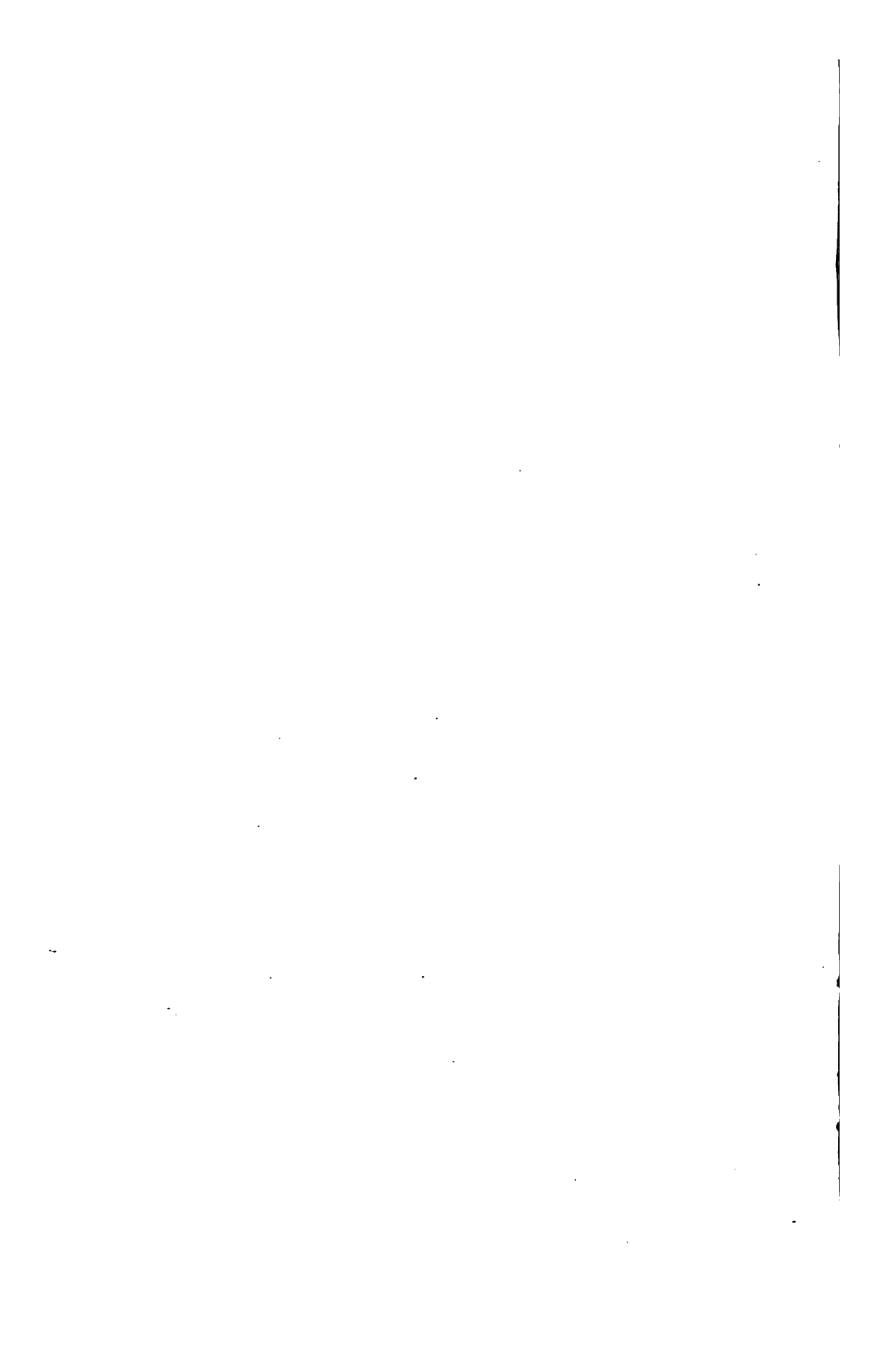
Any one using violence to person or property, threatening or intimidating, molesting or obstructing, in order to coerce such person. (1) Being a master, to dismiss workman, or being workman, to quit employment of master. (2) Being master, not to offer, or being workman, not to accept employment. (3) Being master or workman, to belong to or not to belong to or to pay fine imposed by any association. (4) Being master, to alter mode of conducting business, or number or description of persons employed—to be liable to three months' imprisonment.

Molestation or obstruction to consist in (1) Persistently following about; (2) Hiding or depriving of use of tools, clothes, or other property; (3) Watching or besetting dwelling or business house, or following with two or more others in disorderly manner in street or road.

Offences under Act to be prosecuted under provisions of Summary Jurisdiction Acts.

*Note.*—The Act preceding this (34 & 35 Vict. c. 31) is the Trade Unions Act, and this Act contains the criminal provisions upon the subject.

# EQUITY AND CONVEYANCING.



**DE DONIS CONDITIONALIBUS: 13 Edw. I. c. 1 (1285).**

In cases where land had been given to a man and the heirs of his body with the condition that if he died without heirs the land should revert to the giver or his heir, after issue begotten heretofore, such feoffees had power to aliene the land so given, and to disinherit their issue of the land, contrary to the minds of the givers: Therefore it is ordained that the will of the giver according to the form in the deed of gift manifestly expressed shall be from henceforth observed, so that the donee shall have no power to aliene the land given with such condition, but it shall go to the issue of the donee after his death or revert to the giver or his heir, if issue fail.

*Note.*—Comp. Williams's Real Property, 12 ed. p. 43, or Deane's Conveyancing, p. 26.



**QUIA EMPTORES: 18 Edw. I. c. 1 (1290).**

It shall be lawful for every freeman to sell his lands and tenements so that the feoffee shall hold the same lands and tenements of the chief lord of the same fee by such services as his feoffor held before.

And if he sell part of such lands or tenements, the feoffee shall be charged with the proper portion of the services according to the quantity of the land so sold.

*Note.*—This statute is called *Quia Emptores*, from its commencing words, which recite the grievances of the chief lords. See Williams's *Real Property*, 12 ed., p. 62, or Deane's *Conveyancing*, p. 24.

**STATUTE OF USES: 27 Hen. VIII. c. 10 (1535).**

Where any person or persons shall stand seised of lands or other hereditaments to the *use, confidence, or trust* of any other person, the persons *having* any such use, etc. (*i.e.* the persons *beneficially* entitled) shall be deemed in lawful seisin and possession of the same lands and hereditaments for such estates as they have in the use, etc. So where certain persons are seised to the use of any of themselves. And in uses for payment of rent the parties entitled shall be held in possession and may distrain.

Married woman not to have both jointure and dower out of husband's lands—but if jointure is given her *after* marriage she may elect to have that or dower.

*Note.*—See Williams's Real Property, 12 ed., p. 157, or Deane's Conveyancing, p. 184.



**FRAUDULENT DISPOSITIONS: 13 Eliz. c. 5 (1570).**

**VOLUNTARY CONVEYANCES: 27 Eliz. c. 4 (1585).**

13 Eliz.

Conveyances of land or chattels made with intent to delay or defraud creditors are void: *except* when made *bonâ fide* for valuable consideration to a person without notice of the fraud.

27 Eliz.

Voluntary conveyances of lands with intent to deceive a purchaser shall be void, unless made *bonâ fide* upon valuable consideration; and such conveyances made with any clause of revocation at will of the grantor are also void as against subsequent purchasers for valuable consideration.

*Note.*—By the Bankruptcy Act, 1869, s. 91, any settlement of property by a *trader*, unless in consideration of marriage, or to *bonâ fide* purchaser for value, or after marriage of property accruing through wife, shall, if he become bankrupt within two years after, be void against trustee in bankruptcy, or within ten years, unless it be proved that at the time of making settlement he was solvent without the property in the settlement. *Comp. Twyne's Case* (Indermaur's Comm. Law Cases, 1; 1 Smith, Leading Cases, 7 ed. pp. 1-40).

**ABOLITION OF FEUDAL TENURES: 12 Car. II.  
c. 24 (1660).**

Tenures by knight's service and *in capite* abolished, and all tenures in estates of inheritance, *except copyholds*, are turned into free and common socage, and for ever discharged from the incidents of feudal tenures.

*Guardianship.*—This Act also provides for the appointing of guardians of his children by a father by deed or will.

*Notes.*—This Act turned all military into socage tenures, and abolished all aids. This made all lands devisable by will, for two-thirds of socage lands had been made so devisable by Stat. 32 Hen. 8, c. 1. As to Guardianship, comp. *Eyre v. Countess of Shaftesbury*, the leading case under the statute (Ind. Eq. Cas. 88).

**STATUTE OF DISTRIBUTION: 22 & 23 Car. II.  
c. 10 (1670).**

- Sect. 3. The surplus estate of an intestate is to be thus distributed: one *third* to the wife, and the residue to the children, or the representatives of such children, if dead, other than such child or children (not being heir-at-law) who has any estate by the settlement of the intestate, or has been advanced by a portion equal to his share in the distribution. If such advancement or settlement is less than his share, he may receive the difference. Heir-at-law to share in the distribution, although he takes land.
- If there are no children nor representatives, then one *moiety* of the estate is to go to the wife, and the other to next of kin and their representatives. If no wife, then to children or next of kin.
- Sect. 4. But no representation amongst collaterals after brothers' and sisters' children.
- Sect. 5. No distribution to take place till one year after death.

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**1 Jas. II. c. 17 (1685).**

If after the death of a father any of his children die intestate without wife or children, in lifetime of mother, every brother and sister, and their representatives, shall have an equal share with her.

**STATUTE OF FRAUDS: 29 Car. II. c. 3 (1676).**

*Leases.*

All leases, estates and interests of freehold, or terms of years, or any uncertain interest in lands or hereditaments, created by livery of seisin only or parol, and not by writing, signed by the parties making them or their agents authorised by writing, shall have the force of leases or estates at will only. Sects. 1-3.

*Except* leases not exceeding three years at a rent of two-thirds at least of the full improved value.

No leases, etc. (except copyholds), shall be assigned, granted, or surrendered, except by deed or note in writing, signed by the party or his agent, authorised in writing or by operation of law.

*Trusts.*

All declarations of trusts of any lands or hereditaments shall be in writing, signed by the party legally entitled to declare such trust. Sects. 7-9.

*Except* trusts arising by implication of law, or transferred or extinguished by operation of law.

All grants and assignments of trusts shall be in writing, and signed.

*Miscellaneous.*

Lands of *cestui que trust* are to be liable to judgments against him. Sect. 10.

Writ of execution not to bind goods of debtor till such writ is delivered to the sheriff. Sect. 16.

Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his wages and personalty as before the Act. Sect. 23.

Sect. 25.       Husbands may demand administration of personal estate of their intestate wives.

*Note.*—The important Fourth and Seventeenth Sections will be found at p. 7.

**LANDLORD AND TENANT: 4 Geo. II. c. 28 (1731).**

Person holding over after expiration of lease to pay double yearly value during such period as he holds over.

In all cases between landlord and tenant, where one half year's rent is in arrear, landlord may re-enter serving declaration of ejectment. Proceedings to cease if tenant pay rent and costs; and mortgagee of lease may save his right on paying rent and costs.

Chief leases may be renewed without surrendering underleases; incidents of latter to continue intact.

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**11 Geo. II. c. 19 (1738).**

Landlords may distrain and sell goods fraudulently carried off premises within thirty days, unless sold to person not privy to fraud.

Landlords may break open houses to seize goods fraudulently secured therein.

Landlord may distrain on cattle, stock, and growing crops, fruit, &c. Distress to be stored on premises, or if no suitable barn, &c., on premises, then elsewhere, tenant to have notice of the place.

Distress on crops, etc., to cease if rent be paid before it is cut. Distresses of goods, chattels, stock, etc., may be sold on the premises, all persons to have right of entry in order to view, appraise, or buy.

Attornment by tenant to be absolutely void unless ordered by Court of Law, or made with consent of landlord.

Where tenant for life dies before the rent is payable, such rent or due proportion thereof to be recoverable by executors or administrators.



Where tenant has deserted premises without leaving sufficient distress, two justices may view premises and affix notice of second view within fourteen days. On such second view, if tenant do not appear, and if there be still no sufficient distress on premises, justices may put landlord in possession and lease to become void.

Distresses for rent not to become unlawful *ab initio* by reason of subsequent irregularity in disposition of them, but party aggrieved may recover damages.

**MORTMAIN: 9 Geo. II. c. 36 (1736).**

**PUBLIC PARKS, SCHOOLS, AND MUSEUMS ACT**  
**1871: 34 Vict. c. 13.**

No lands nor money to be laid out shall be given for any charitable use, unless by deed indented and executed before two witnesses twelve months before death of donor, and enrolled within six months after execution: and such gift must take effect in possession *immediately* on execution, without any power of revocation.

Gifts to the universities, or Eton, Winchester, Westminster excepted.

By subsequent statutes various exceptions have been made in favour of schools, literary, etc., institutions, recreation grounds, etc. By *Public Parks, Schools & Museums Act*, 1871, gifts of land for park up to twenty acres, and school or museum up to one and two acres respectively are rendered valid.

*Note.*—Comp. the leading case of *Corbyn v. French* (Ind. Eq. Cas. 20).

**THELLUSSON ACT: 39 & 40 Geo. III. c. 98 (1800).**

Income is not to accumulate (1) for longer than the life of the grantor, *or* (2) twenty-one years from the death of such grantor, *or* (3) during infancy of any person living or *en ventre sa mère* at death of grantor, *or* (4) during minority only of any person who under the deed, if of full age would be entitled to the income.

Income so directed to be accumulated to go to person otherwise entitled.

*Not* to extend to provisions for payment of debts or raising of portions, or direction as to produce of timber.

*Note.*—The leading case upon the construction of this statute is *Griffiths v. Vere*, where a direction for an excessive accumulation was held void only for the excess: *Indermaur's Eq. Cas.* p. 18.

**RESIGNATION BONDS: 9 Geo. IV. c. 94 (1828).**

Patron of advowson held as private property may present a clerk under a previous agreement with him for his resignation in favour of any one person named, or one of two persons, each being his uncle, son, grandson, brother, nephew, or grandnephew by blood or marriage. One part of the bond must be deposited with registrar of the diocese within two calendar months, and the resignation must refer to the engagement, and state for whose benefit it is made.

*Note.*—Resignation bonds are employed when a patron has some relative he wishes to present the living to, but who is not yet qualified for the purpose. A general resignation bond is bad.

**UNDISPOSED-OF RESIDUE: 1 WILL IV. c. 40 (1830).**

Executors are to be considered trustees of undisposed-of residue for next of kin, unless intention appears in the will that they are to take beneficially.

*Note.*—Up to the passing of this act executors took the residue beneficially, unless the will expressed a different intention, and this was inferred from very slight circumstances, *e.g.*, a direction to keep an account, or a legacy to the executor. In that case the executor was treated as trustee for (1) next of kin, or (2) for the Crown.

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**ILLUSORY APPOINTMENT: 1 WILL IV. c. 46 (1830);  
37 & 38 Vict. c. 37 (1874).**

By former of these acts, no appointment made in exercise of a power to appoint among several was to be invalid, because a *nominal* share only was appointed to one of the objects of the appointment.

By the later act, the *absolute exclusion* of such object shall not invalidate the appointment.

**PRESCRIPTION ACT: 2 & 3 Will. IV. c. 71 (1832).**

Claims to profits (except tithes, rent, and services) not to be defeated after thirty years' enjoyment, merely by showing that such enjoyment began prior to such period. After sixty years' enjoyment, the right to be indefeasible, unless had by agreement.

So as to claims to rights of way, water, etc., the periods, however, to be twenty and forty years respectively.

Right to light to be indefeasible after uninterrupted enjoyment for twenty years, unless enjoyed by consent in writing.

(Sections 4—8 prescribe the mode of calculating the period of enjoyment.)

**LIMITATION OF ACTIONS—REAL PROPERTY:****3 & 4 Will IV. c. 27 (1833).**

Sect. 2.       \* No distress or entry may be made, or action brought to recover land or rent, but within twenty years after the right accrued.

Sect. 3, &c.     As to estates in reversion, etc., or other future estates, the right shall be deemed to have accrued where such estate became an estate in possession.

When an acknowledgment of title has been given signed by the person in possession, to the person entitled, the right to be deemed to accrue from date of such acknowledgment.

Disabilities.  
Sects. 16-18.

\* Persons under disability (by infancy, coverture, lunacy, etc., or absence beyond seas) and persons claiming under them are allowed ten years from removal of such disability, or from death. But the whole period, including that of disability, not to exceed forty years, and no further time is to be allowed on account of disability of other persons.

Trusts.

When land or rent is vested in a trustee upon any express trust, the right of the cestui que trust to bring a suit against the trustee shall be held to accrue when such land, etc., was conveyed to a purchaser for value, and then only as against such purchaser, or persons claiming through him.

[But see Judicature Act, 1873, s. 25, p. 42.]

Fraud:

In case of concealed fraud, the right shall be held to accrue when such fraud is, or by reasonable diligence might have been, discovered—except as against an innocent purchaser for value.

Mortgages.  
Sect. 28.

When a mortgagee has obtained possession of the mortgaged land, no suit for redemption shall be brought but within twenty years from such posses-

sion, or from any written and signed acknowledgment of mortgagor's title given by mortgagee.

No lands or rents to be recovered by ecclesiastical corporation sole (i.e., bishops, etc.), but within two incumbencies, and six years after appointment of a third person, or a term of sixty years. No advowson to be recovered but within three incumbencies of sixty years, if they do not together amount to that time. But no action shall be brought after 100 years from first adverse possession. Ecclesiastical property.

\* Money charged upon land and legacies to be deemed satisfied at the end of twenty years, unless some acknowledgment is given.

No arrears of dower to be recovered for more than six years. Dower.

No arrears of rent or interest on money charged on land, etc., or any legacy shall be recovered, but within six years of its becoming due, or of a written and signed acknowledgment. Rent, &c.

*Note.*—Important changes are made in the law of the sections marked (\*), and these sections are repealed by the Real Property Limitation Act, 1874, p. 78.



**REAL PROPERTY LIMITATION ACT: 37 & 38 Vict.,  
c. 57 (1874).**

No land or rent to be recovered but within twelve years after the right of action accrued, and within six years when person entitled to particular estate is out of possession.

In cases of infancy, coverture, or lunacy six years to be allowed from the termination of the disability, or the death of the person under disability. No time to be allowed on account of absence beyond seas.

No allowance of time on account of disabilities to extend beyond thirty years.

Mortgagor barred at end of twelve years from time that mortgagee took possession, or from last written acknowledgment of right to redeem.

Money charged upon land and legacies to be deemed satisfied at end of twelve years, if no interest paid or acknowledgment in writing given.

Time to run against express trusts as in any other case.

The Act to come into operation 1 Jan., 1879.

*Note.*—This Act makes important changes in the law under the previous Act (p. 76), and repeals parts of it.

**FINES AND RECOVERIES ACT: 3 & 4 Wm. IV.  
c. 74 (1833).**

Fines and recoveries abolished. Estates tail and estates expectant thereon no longer barrable by warranty.

Henceforth every actual tenant in tail, whether in possession, remainder, contingency or otherwise, may dispose of lands entailed as against all persons whatsoever: *except* tenants in tail restrained by Act of Parliament or tenants in tail after possibility of issue extinct.

Issue inheritable to estate tail cannot dispose of their expectancy.

Mortgage by tenant-in-tail avails against all whose estates he might bar.

Disposition by tenant-in-tail must be by deed, not by will or contract, enrolled in chancery within six calendar months after execution. But lease not exceeding twenty-one years to commence within twelve months at not less than five-sixths of rack-rent need not be enrolled.

If tenant in tail be a married woman, her husband must concur and she must acknowledge the deed.

When there exists a protector of the settlement his consent must be given by the disentailing deed or by a distinct deed executed at same time as or before, and enrolled at same time as or before, the disentailing deed.

Where there is subsisting a prior estate to the estate-tail under the same settlement (not being an estate for years—unless for years determinable on life or lives) the owner of the prior estate is protector of the settlement. An estate by the curtesy is a prior

estate. Tenant in dower is not protector, nor is a bare trustee. Settlor may in settlement appoint one, two, or three persons *in esse* to be protector, and by means of a power inserted in the settlement the protectorship may be perpetuated in any number of persons *in esse* to be appointed by the donee of the power in place of any person dying or relinquishing office as protector. The number composing the protector, however, never to exceed three. Deed appointing protector under a power, or by which he relinquishes office, to be enrolled in chancery within six months.

Where from any reason whilst there is a prior estate there is no protector, or none capable of acting, the Court of Chancery is protector. Where protector is a lunatic the Lord Chancellor acts.

Where a married woman would, if single, be protector, she and her husband together are protector unless prior estate be settled to her separate use. The protector's consent is uncontrolled and irrevocable.

Without protector's consent, the tenant in tail can bar his own issue in tail but not remaindermen or reversioners.

An estate-tail in copyholds,—if legal, to be barred by surrender, if equitable, by surrender, or deed.

Deed barring equitable estate-tail to be entered on rolls of manor; no other enrolment required in disentailing assurances of copyhold.

If protector's consent be given by deed, the deed with an endorsement thereon of production before the steward to be entered on the Court Rolls.

If not given by deed, it must be given to person taking surrender, and mentioned in memorandum of surrender.

If tenant in tail becomes bankrupt the trustee [commissioner] shall by deed dispose of the land entailed for the benefit of the creditors.

Subject to the powers given to the trustee the bankrupt tenant-in-tail shall retain his powers of disposition.

32 & 33 Vict. c. 71, sect. 22. Trustee not compellable to be admitted to copyholds of bankrupt, but may deal with them as if they had been surrendered to such uses as the trustee may appoint, and the appointee of the trustee to be admitted accordingly.

32 & 33 Vict. c. 71, sect. 25. Trustee to have power to deal with entailed property of the bankrupt as the bankrupt himself might have done.

Where personalty has been impressed with the qualities of realty and entailed, disentailing assurance to be by assignment by deed enrolled in chancery within six months after execution.

Henceforth a married woman (unless tenant in tail) may dispose of lands, or of money to be invested in lands, or may extinguish powers vested in her, by deed to be concurred in by the husband and acknowledged by her before a judge or two commissioners, after separate examination. Commissioners to sign a memorandum of acknowledgment on the deed, and a certificate on a separate parchment, which is to be filed in Common Pleas.

In case of copyholds, as previously to the Act, consent of husband and acknowledgment of wife to be made on surrender to the lord of the manor. But whether the copyhold estate be equitable or legal the wife must be separately examined.

Concurrence of husband, if lunatic or otherwise incapable of executing a deed, &c., may be dispensed with, unless the Lord Chancellor or the Court of Chancery be protector in his stead.

**DEBTS (SIR S. ROMILLY'S ACT): 3 & 4 WILL. IV.  
c. 104 (1833).**

Realty, freehold or copyhold, not by will charged with or devised subject to payment of debts to be administered in Equity for payment of testator's simple contract and specialty debts. [Specialties in which heirs are bound to have priority.]

**32 & 33 Vict. c. 46 (2nd Aug. 1869).**

All specialty and simple contract creditors to stand in equal degree.

*Note.*—Until the first Act here given a simple contract creditor could not come upon the heir of real estate for his debt. The Act still gave a preference to creditors by specialty. This was abolished by the later Act, and now all creditors stand in an equal degree.

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**DOWER: 3 & 4 Will. IV. c. 105 (1833).**

Widow to have dower out of equitable estate; also out of land to which husband had right of entry or action merely. Dower to be barred by disposition of estate by husband, in his lifetime, or by will, or by declaration in any deed executed by him or in his will.

A devise to widow of lands out of which she is dowable bars her dower, unless a contrary intention appear.

But bequest to her of personalty or land out of which she is not dowable is no bar unless contrary intention appear.

Husband is bound by his agreement not to bar dower.

Legacies in satisfaction of dower still to have priority.

Operates from 1 Jan. 1834.

**INHERITANCE ACT: 3 & 4 Will. IV. c. 106.**

Descent is to be traced from the purchaser—that is the person who last acquired the land otherwise than by descent.

[When there is a total failure of heirs of the purchaser the descent shall be traced from the person last entitled as if he had been purchaser : 22 & 23 Vict. c. 35, 1859.]

After 31st December, 1833, heir to whom land is devised by testator shall take as devisee and not by descent.

Every lineal ancestor may be heir to his issue, and in default of issue of the purchaser his nearest lineal ancestor to be his heir.

Every relation of the half-blood of the purchaser is to be entitled, next after any relations in the same degree of the whole blood and their issue, when the common ancestor is a male, next after the common ancestor when the common ancestor is a female.

The male paternal ancestors and their issue are preferred to the females and their heirs, the female paternal and their heirs to the mother and other maternal and their issue, the mother and male maternal and their other issue to the female maternal.

The mother of a more remote male paternal ancestor and her heirs to be preferred to the mother of a less remote, and so of the mother's maternal ancestors.

**WILLS ACT: 1 Vict. c. 26 (1837).**

All property may now be disposed of by will, including property acquired after execution of will.

In the case of copyholds, the lords' rights to fines are not affected; and wills of such estates must be entered on court rolls.

A freehold estate *pur autre vie* not disposed of by the will to be chargeable in hands of heir if special occupant, as assets; otherwise to rank as personalty.

Will of a minor invalid; and of a married woman, except as to separate estate.

Will must be in writing, signed at the foot or end by the testator or by some other person in his presence by his direction: such signature to be made and acknowledged in presence of two or more witnesses, present at same time, who are to attest and subscribe will in presence of testator.

Appointments by will to be executed like other wills.

A will not to be invalid for incompetency of witness: but gift to witness, or husband or wife of witness is to be void, except as to a charge of debts. Creditor or executor may be a witness.

A will is revoked by marriage. It may also be revoked by destroying by testator, by another will or codicil, or writing executed like a will. Alterations in a will after execution to be executed like a will, or by memorandum made and attested. Will may be revived by re-execution or by codicil.

A will to speak from testator's death, unless a contrary intention appear.

Residuary devise to include estates in lapsed and void devises: a general devise to include copyright *hold*



and leaseholds ; and property over which testator has a general power of appointment.

A devise without words of limitation to pass the fee, or whole estate the testator had to dispose of.

Words "die without issue" in a devise do not mean an indefinite failure of issue.

A devise of real estate to a trustee shall pass the whole estate of the testator : and an unlimited devise to trustee shall take the whole estate of testator. If a devisee in tail dies in testator's life-time leaving issue inheritable and living at testator's death, the devise shall not lapse.

Gifts to children who die leaving issue living at testator's death not to lapse.

Operates from 1st Jan. 1838,—not to extend to Scotland.

**15 & 16 Vict. c. 24 (1852).**

By this Act it is provided as to the position of the signature of a will, that it is valid if so placed that it shall be apparent that testator intended to give effect to the writing as his will. But no signature shall give effect to anything written after it, or inserted after the signature was made.

**JUDGMENTS: 1 & 2 Vict. c. 110 (1838).**

Under *elegit* sheriff may deliver in execution all lands and hereditaments (including copyholds) of which the debtor or trustee for him is seised at or after date of judgment, or over which he has any disposing power which he might without anyone's assent exercise for his own benefit.

Under *fi. fa.* sheriff may seize money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties or other securities, and sue on them in his own name, but sheriff is not bound to sue unless indemnified. Judgment to operate as a charge upon real estate, but no proceedings to be taken in equity to obtain benefit of such charge until expiration of a year.

Government stock or shares may by order of a judge stand charged with judgment debt and interest.

Decrees, rules, and orders to have the effect of judgments.

No judgment to be effectual as against purchasers, mortgagors, or creditors, until registered in Common Pleas in debtor's name.

**2 & 3 Vict. c. 11 (4th June, 1839).**

Judgments after expiration of five years from registry to be void as against purchaser's mortgagees or creditors, unless re-registered within five years before the execution of the conveyance, or as to creditors within six years before the right accrued.

*Lis pendens*, or Crown debt, not to bind purchaser without notice, unless registered in Common Pleas like judgment.

*Leading Statutes Summarised.*

**18 & 19 Vict. c. 15 (26th April, 1855).**

Annuities or rent charges for lives or years or greater estate determinable on lives (except those granted by marriage settlement or will) not to bind purchaser without notice, unless registered in Common Pleas.

**23 & 24 Vict. c. 38 (23rd July, 1860).**

No judgment to affect land as to *bonâ fide* purchaser (with or without notice) unless writ of execution issued and registered in Common Pleas in the name of the *creditor* before conveyance and payment of purchase-money, and unless such execution be put in force within three calendar months.

**27 & 28 Vict. c. 112 (29th July, 1864).**

No judgment to affect land until such land is actually delivered in execution, under writ to be registered in Common Pleas in *debtor's* name. Creditor is then entitled to an order for sale of the land from the Court of Chancery.

**REAL PROPERTY AMENDMENT ACT: 8 & 9 Vict.  
c. 106 (1845).**

Corporeal hereditaments to lie in grant as well as livery. Feoffments (except under custom by infant) partitions, and exchanges, assignments of chattel interests, and surrenders in writing (except of copyholds, and except in cases of interests which might by law have been created without writing) and leases required by law to be in writing, to be void unless made by deed. Feoffments not to have tortious operation: exchanges and partitions not to imply condition; words "give" or "grant" in deed not to imply covenant except by statute.

Benefit of covenant may be taken by one who is not party to deed.

Not necessary to indent an indenture.

Contingent, executory, or future interest, possibility coupled with interest in any hereditaments, or a right of entry to be alienable by deed.

Interest in hereditaments may be disclaimed by married women by deed.

Contingent remainders may take effect although prior estate should determine by forfeiture, surrender, or merger.

When reversion on lease is surrendered or merged, the next estate, for purpose of preserving incidents of reversion to be deemed the reversion expectant on the same lease.

**SATISFIED TERMS ACT: 8 & 9 Vict. c. 112 (1845).**

Every satisfied term of years that shall on 31st Dec., 1845 be, by express declaration, or by construction of law, attendant upon the inheritance or reversion of any lands, shall on that day cease absolutely. Except that such term, if attendant by declaration, shall afford the same protection against all incumbrances, demands, etc., as if it had continued to subsist, but had not been assigned or dealt with.

Every term that shall hereafter become satisfied shall, upon becoming attendant upon any inheritance, cease and determine.

**TRUSTEE RELIEF ACT: 10 & 11 Vict. c. 96 (1847).**

Trustees may, after filing an affidavit describing the trust and the *cestuis que trustent*, transfer their trust funds into the Court of Chancery.

Such payment discharges them from all liability for subsequent administration of the funds, but is no discharge as to the past.

They must give notice to all persons interested, and any such person may petition the court for any order necessary for administering the fund.

*Note.*—Besides the method here described, a trustee may be discharged from his office ; (2) by being released by his *cestui que trust* ; (3) by power given in the instrument creating the trust, or the power given in Lord Cranworth's Act if the trust was created after it ; (4) by discharge by the High Court of Justice ; (5) by death.

**TRUSTEE ACT: 13 & 14 Vict. c. 60 (1850).**

The Lord Chancellor may convey estates, contingent rights, and stock of lunatic trustees and mortgagees, and he may convey stock of deceased person whose personal representative is lunatic. Court of Chancery may convey estates and contingent rights of infant trustees and mortgagees, and it may convey the estate of trustee who is out of the jurisdiction.

Court may convey estates where persons are seised of lands jointly with parties out of the jurisdiction. Court to aid where trustee is dead without heir, or if it be uncertain who is trustee, or if the trustee should refuse to act. Similarly with regard to mortgagee.

In any suit concerning land, the Court may declare what parties are trustees of such land or any part of it. Wherever the appointment of new trustees is attended by difficulty, the Court may appoint either in addition, or in substitution, to the old trustees.

No escheat or forfeiture of trust or mortgage by reason of attainder or conviction of trustee or mortgagee.

**DEFECTS IN LEASES UNDER POWERS: 12 & 13 Vict.  
c. 26 (1849).**

Leases invalid owing to deviation from terms of the power, to be deemed contracts in Equity for such leases as might have been granted under the power. But if grantor or reversioner elect to confirm the invalid lease, lessee remains bound. Acceptance of rent is a confirmation.

Leases invalid at granting thereof may become valid if the grantor continue in ownership until the time when he might lawfully grant such a lease.



**AGRICULTURAL FIXTURES: 14 & 15 Vict. c. 25 (1851).**

On determination of under-tenancy by cesser of the estate of landlord entitled for life or other uncertain interest, instead of receiving emblements, tenant to hold until expiration of current year of his tenancy, no notice to quit being then necessary, rent to be apportioned. Growing crops seized under execution, so long as they remain upon the land, are liable, even though sold under the execution, for rent which has accrued since their seizure.

Tenant may remove buildings and fixtures erected by him on farms, unless landlord, after notice in writing, elect to take them.

Tenant leaving tithe rent-charge unpaid, landlord or succeeding occupant may pay the same, and recover from the former tenant as simple contract debt.

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**AGRICULTURAL HOLDINGS (ENGLAND) ACT:****38 & 39 Vict. c. 92 (13th Aug. 1875).**

Tenant may, on determination of tenancy, receive compensation for certain improvements specified in the Act, and for breaches of covenant on the part of the landlord, deduction being made for rent, taxes, rates, and tithes, for which tenant is liable.

The landlord by counter claim may obtain compensation for waste or breach of covenant on part of tenant committed within four years previous.

Sect. 51.

By this Act in the case of a yearly tenancy, a year's notice instead of six months must be given.

Act only extends to holdings over two acres, agricultural or pastoral.

**LOCKE KING'S ACT: 17 & 18 Vict. c. 113 (1854).**

**LOCKE KING'S AMENDMENT ACT: 30 & 31 Vict.  
c. 69 (1867).**

**LOCKE KING'S ACT AMENDMENT: 40 & 41 Vict.  
c. 34 (1877).**

The heir or devisee of real estate subject to a mortgage shall not be entitled to have the mortgage debt paid out of the personalty, *unless* the mortgagor has by will or deed so directed.

By Amending Act in construing will of any person dying after 31st December, 1867, a *general* direction for payment of debts out of the personalty shall *not* be held to include mortgage debts, unless it is expressly so said.

By the second Amending Act, the two previous Acts shall be held to extend, as to any testator or intestate dying after 31st December, 1877, to any land or other hereditaments of whatever tenure.

*Note.*—The last Act, therefore, extends the principle to leaseholds. The term mortgage is also by this Act extended to a lien for unpaid purchase-money in the case of an *intestate*. Williams, Real Property, 12 ed., 438.

**INFANTS' SETTLEMENTS: 18 & 19 Vict. c. 43 (1855).**

Male infant not under twenty, and female infant not under seventeen may, with sanction of the Court of Chancery, make valid settlements, or contracts for settlements, in contemplation of marriage.

Appointment under power or disentailing assurance so executed to be void in case the infant should die under age.

Sanction may be given summarily, upon petition by the infant or guardian.

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**MARRIED WOMEN'S REVERSIONARY INTERESTS:  
20 & 21 Vict. c. 57 (1857).**

Where married woman has future or reversionary interest vested or contingent in personal estate under any instrument except marriage settlement or instrument under which she is restrained from alienation, she may dispose of it or extinguish a power over it by deed duly acknowledged, with her husband's concurrence.

In the same manner she may release her equity to a settlement out of personal estate to which she is entitled in possession.

**LORD ST. LEONARDS' ACT: 22 & 23 Vict. c. 35 (1859).**

Licence to do act which would otherwise create forfeiture to extend only to specific instance, and not extinguish right of reëntry. Similar licence to one of co-lessees not to extinguish right of reëntry as against the other or others.

Assignee of part of reversion to have right of reëntry *quoad* his share.

Relief to be granted against forfeitures for breach of covenant to insure if no damage by fire has happened, if breach has been committed by accident or mistake, and if there is an insurance on foot when application is made for relief.

Record of relief to be endorsed on lease. Same person not to be relieved twice on same covenant; nor if a forfeiture has already been waived out of Court.

Lessor or mortgagee to have full benefit of informal insurance.

Purchaser of leaseholds, being furnished with receipt for last payment of rent by outgoing tenant, and there existing an insurance at completion of purchase, not to be liable for past breach of covenant to insure committed before completion of purchase, of which he had no notice.

Release from rent-charge of part of hereditament not to extinguish whole rent-charge.

Release from judgment of part of hereditament not to affect validity of judgment as to remainder unreleased.

Deed attested by two witnesses to be valid execution of power of appointment by deed, or writing not testamentary, although additional attestation or other

solemnity be expressly required. But preliminary *consent* not dispensed with.

Any one may assign personally (including chattels real) directly to himself and another person or persons or corporation.

*Bonâ fide* payment to and receipt of any person to whom purchase-money is payable on any trust, to be effectual discharge unless contrary be expressed in instrument creating trust.

Vendor or his agent concealing material instrument, or falsifying pedigree with intent to defraud purchaser, to be guilty of a misdemeanour, and also liable to action for damages. Leave to prosecute must be given by attorney or solicitor-general.

Trustee, executor, or administrator, *bonâ fide* and without notice making any payment under a power of attorney not to be liable by reason that the person giving the power be dead, or has avoided the power. The person entitled has his remedy against the person to whom payment has been made.

Where executor or administrator has satisfied liabilities already accrued under lease and set apart fund to answer future claims in respect of sums to be laid out on the property, he may distribute personally without incurring personal liability for any subsequent claim under the lease. But lessor may follow the deceased's assets.

Executor or administrator having given such notice as would have been given by a Court of Chancery, may distribute assets without becoming liable to those of whose claims he has not had notice. Creditor, however, may follow deceased's assets.

Trustee, executor, or administrator may apply by petition or summons in Chancery for direction.

Instrument creating trust to be deemed to contain clauses for indemnity and re-imbursement of trustees.

**AMENDMENT ACT: 23 & 24 Vict. c. 38 (1860).**

Waiver by lessor not to extend to any subsequent breach unless a contrary intention appear.

Uses to take effect as they arise by force of seisin originally vested in seisinnee to uses. Continued existence in him or elsewhere of *scintilla juris* not to be deemed necessary to give effect to future uses.

Action to recover share of personal estate of intestate limited to 20 years next after right to receive it has accrued, or next after part payment or acknowledgment in writing.

An account of estate of deceased may be ordered at any time after probate or letters of administration : on such order proceedings against executors or administrators may be suspended.

*Note.*—See Judgments, *ante*, p. 88.

**LORD CRANWORTH'S ACT: 23 & 24 Vict. c. 145 (1860).**

Trustees who have power of sale by *express declaration* may sell in any manner, and if authorised to exchange they may do so for any other hereditaments in the same country.

At such sale or exchange trustee may buy in, rescind, or vary contract, or re-sell without responsibility for loss.

Money received on such sale or exchange to be laid out as indicated in trust instrument. In the absence of indication, in purchasing other hereditaments in the same country, to be held subject to same trusts, or in paying off incumbrances on other estates subject to same uses. Purchaser not bound to inquire as to application of purchase-money.

Trustee of renewable leaseholds *may*, and if required *must*, try to obtain a renewal on reasonable terms. For this purpose he may do all necessary acts, *e.g.*, he may surrender subsisting lease.

Mortgagee, after a year from time when principal became due, or after interest has been six months in arrear, or after omission to pay premium on insurance by mortgagor, may sell the property, or insure against fire, adding premium to principal debt, or appoint a receiver.

No sale to be made till after six months' notice in writing to mortgagor.

No receiver being named in deed, mortgagee may appoint one in default of the mortgagor doing so.

Trustees for infant (though property contingent on his attaining twenty-one) may apply income in whole or part to his maintenance and education, whether there be another fund or not applicable to that

purpose, residue of income to be invested at compound interest.

Trustee, however appointed, dying, becoming incapable, etc., person appointed by trust instrument, if any, or remaining trustee or trustees or executor or administrator of last surviving trustee may in writing appoint a new trustee or trustees.

Receipt in writing of trustee is sufficient discharge, and exonerates purchaser from seeing to application of purchase-money.

Executors may pay debts on any evidence, accept composition or security, allow time, compromise or submit to arbitration.

Powers of the Act to take effect, unless expressly negatived in the instrument, and if not expressly negatived to take effect subject to variations contained in instrument.





**TRUSTEES' POWER TO SELL LAND, RESERVING  
MINERALS: 25 & 26 Vict. c. 108 (1862).**

Trustees authorised to dispose of land by way of sale, exchange, partition, enfranchisement, may, unless forbidden by instrument, dispose of the same, reserving the minerals with or without powers of working them, or may dispose of the minerals with or without such powers apart from the land.

But such disposition requires sanction of the Court of Chancery.

The Act is retrospective.

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**SALE OF LAND BY AUCTION ACT: 30 & 31 Vict.  
c. 48 (1867).**

The employment of a puffer at a sale of land by auction to make the sale invalid in equity as well as in law.

Conditions of sale must state whether there is a reserved price, or whether a right to bid is reserved. If the sale is without reserve the seller may not employ a bidder.

The practice of re-opening biddings under order of Chancery to be discontinued except on ground of fraud.

**INVESTMENT OF TRUST FUNDS ACTS:**

(4 & 5 Wm. IV. c. 29; 22 & 23 Vict. c. 35; 23 & 24 Vict. c. 38; 23 & 24 Vict. c. 145; 30 & 31 Vict. c. 132; 34 & 35 Vict. c. 27; 34 & 35 Vict. c. 47.)

Trustee, executor, or administrator, unless forbidden by trust instrument, may invest on real securities in any part of the United Kingdom, in stock of the Bank of England, or Ireland, in East India Stock (old or new), in Parliamentary or Government Securities, securities, the interest of which is guaranteed by parliament, or in Metropolitan Consolidated Stock.

After order by Lord Chancellor with Master of the Rolls, cash under control of the Court may be invested in Bank Stock, East India Stock, Exchequer Bills, 2½ per cent. Annuities, mortgages of freeholds and copyholds in England and Wales, Consols, Reduced and New Threes.

Trustees having power to invest trust funds on mortgages or bonds of a railway or other company, may invest in the Debenture Stock of such company.

**SALES OF REVERSIONS: 31 Vict. c. 4 (1867).**

No purchase *bonâ fide* of any reversionary interest, real or personal, to be set aside merely on ground of undervalue.

"Purchase" to include every contract or conveyance by which any beneficial interest may pass.

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**NATURALISATION ACT, 1870 (ALIENS): 33 Vict. c. 14 (1870).**

An alien may hold and dispose of real and personal property of every kind in same manner as a natural born British subject, and title to property of every kind may be derived through him.

The Act is not *retrospective*, nor does it permit an alien to hold any office, municipal or parliamentary, or other franchise, nor to be the owner of a British ship.

**PARTITION ACT: 31 & 32 Vict. c. 40 (1868).**

In a suit for partition the Court *may*, if it see fit, on the request of *any party* interested, and notwithstanding dissent or disability of the others, direct a sale of the property, and *shall* so direct if a party or parties collectively interested to the extent of one-half desire it, unless there be good reason to the contrary.

Share of party desiring sale may be bought at valuation by other parties interested.

Court may permit parties interested to bid at sale.

Party may maintain suit for partition against one or more of the parties interested without serving the others, if any; but all must be served with the decree or order on the hearing, and after such notice will be bound by the proceedings, and will be deemed parties to the suit, and may within a limited time apply to the Court to add to the decree or order.

*Note.*—This provision, however, has been amended by the Amendment Act: see below.

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**PARTITION AMENDMENT ACT: 39 & 40 Vict. c. 17 (1876).**

Where notice of decree cannot be served, the Court may dispense with it, and direct advertisements to be published calling on persons interested to come and establish their claims within a time limited. At the expiration of the time all are bound by proceedings; and Court may direct a sale.

Proceeds of such sale to be paid into Court to await further order. Court to fix a time, which may be

extended for distribution. In the meanwhile fresh notices by advertisement as Court may direct. Finally Court may distribute amongst those whose claims appear good to the exclusion of all others. But a person found to have been excluded may recover his share from participators.

*Note.*—Judicial partition was formerly effected by the common law writ of partition, but this was abolished by 3 & 4 Will. IV. c. 27, and equity, which had long had a concurrent, was left with exclusive jurisdiction. Partition may not only be effected (1) by judicial process perfected by mutual conveyances; but (2) by deed, (3) through the Inclosure Commissioners. See Walker's Partition Acts, 1876.

**MARRIED WOMAN'S PROPERTY ACT, 1870:**

33 & 34 Vict. c. 93 (9th Aug. 1870).

**MARRIED WOMAN'S PROPERTY AMENDMENT**

**ACT, 1874: 37 & 38 Vict. c. 50 (30th July, 1874).**

Property or earnings of a married woman in any Sect. 1.  
separate employ, and investments of them shall be  
taken as held for her separate use, and her receipts  
shall be a sufficient discharge.

Monies hereafter placed in savings-banks or Govern- Sect. 2.  
ment annuities—to be held for separate use.

In case of public stocks (for not less than £20) or Sects. 3-6.  
paid up shares, etc., of any joint stock company, or  
any friendly or benefit societies duly registered, to the  
holding of which no liability is attached, any woman  
married, or about to marry, may apply to Bank of  
England, or such company respectively, to have them  
transferred to her married name for her separate use.  
They must not have been obtained with the husband's  
monies without his consent, nor in fraud of his  
creditors.

Any woman hereafter married becoming entitled to Sects. 6-8.  
personal property of next of kin of an intestate, or to  
any sum not more than £200 under deed or will shall  
hold the same to her separate use, subject to any  
settlement. So also as to the rents of freeholds or  
copyholds coming to any woman hereafter married as  
an intestate's heiress.

Disputes between husband and wife as to such Sect. 9.  
separate property may be heard on summons or motion  
by Court of Chancery, or in England by a County  
Court judge, subject to appeal.

Married woman may insure her own or her husband's Sect. 10.  
life for her separate use, which must be expressed on

the policy ; and a policy made by a man for benefit of his wife and children shall not be under control of his creditors.

**Sect. 11.** Married woman may sue in respect of such property in her own name, and shall have all rights civil and criminal as if she were unmarried.

**Sect. 12.** [A husband married after date not to be liable for his wife's ante-nuptial debts], but she may be sued for them and her separate property will be liable.

**Sects. 13-14.** Married woman with separate property to be liable for maintenance of her husband and children ; but this is not to relieve the husband.

· By the Amending Act, part of sect. 12 of the principal Act is repealed as to marriages after 30th July, 1874, and the husband is made liable for his wife's ante-nuptial obligations to the extent of the assets which have vested in him through his wife, or which by reasonable diligence he might have reduced into possession, or the value of any property which the wife, in contemplation of marriage, has, with his consent, transferred to any person in fraud of her creditors.

The Acts do not extend to Scotland.

**VENDOR AND PURCHASER ACT: 37 & 38 Vict.  
c. 78 (1874).**

On contract for sale of land, forty years' title only may be required instead of sixty.

In the absence of stipulations to the contrary :—

(1) Under a contract to assign a lease the title to the freehold shall not be required.

(2) Recitals and statements in instruments twenty years old at date of contract shall, unless proved to be inaccurate, be sufficient evidence of the truth of such matters.

(3) Absence of legal covenant to produce deeds not to be an objection if purchaser will have equitable right.

(4) Such covenants for production as purchaser can require to be furnished at his expense, but to be perused and executed at vendor's expense.

(5) Vendor retaining any part of estate may retain deeds.

Legal personal representative of mortgagee may, on payment of mortgage debt, convey or surrender the legal estate.

On death of bare trustee of fee simple of any hereditament, it shall vest in his legal personal representative. [By 38 & 39 Vict. c. 87, s. 48, the effect of this section is limited to the case of intestacy.] Married woman, being bare trustee of real estate, may convey as though she were feme sole.

[No priority or protection to be gained by "Tacking"—repealed by 38 & 39 Vict. c. 87, s. 129.]

When a will of land in Yorkshire or Middlesex has not been registered in due time, assurance by devisee to take precedence of assurance by heir-at-law, if registered before the latter.

*Note.*—On the subject of Tacking, comp. *Marsh v. Lee* and *Bruce v. Duchess of Marlborough* (Ind. Eq. Cas. 62).



**LAND TRANSFER ACT: 38 & 39 Vict. c. 87 (1875).**

A land registry to be established. Application for registration with an absolute title, or with a possessory title only.

A title may be registered, qualified by reservations, where an absolute title cannot be established. The registered proprietor of freehold or leasehold land may transfer or mortgage it in whole or in part by entry of the transaction upon the register. The registrar to deliver if required a "land certificate," or "certificate of charge," to the transferee or mortgagee respectively.

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**SETTLED ESTATES ACT: 40 & 41 Vict. c. 18 (1877).**

Court may authorise leases of settled estates with following conditions:—

(1) Lease must take effect within a year; (2) agricultural or occupation lease not for more than twenty-one years in England, or thirty-five in Ireland; (3) mining lease, lease of water mills, way leases, or other rights or easements, forty years; (4) repairing lease, sixty years; (5) building lease, ninety-nine years. (But Court may authorise longer lease except agricultural.) (6) Best rent to be reserved without fine; but in mining, repairing, or building lease, peppercorn rent may be reserved for first five years; (7) lease not to authorise felling trees, except necessary for building, &c.; (8) lease must be by deed and counterpart executed by lessee, and must contain proviso for re-entry on non-payment of rent for twenty-eight days; (9) if lease be of earth, coal, stone, or mineral, part of rent to be invested; *one-fourth*, if party entitled to receipt may work the earth, coal, &c., for his own benefit; otherwise *three-fourths*.

Power to lease may be vested in trustees, and take effect as though originally contained in settlement; leases so granted need not be settled by Court.

Court may authorise sale of settled estate or of timber thereon.

Consideration for land sold for building purposes may be fee-farm rent. Minerals may be excepted, and rights reserved.

Part of settled estate may be laid out in streets, etc., either dedicated to public or not. Expense may be defrayed by sale or mortgage of part of settled estate.

Application to Court to exercise powers of Act to be

made by petition, by person entitled to rents and profits for term determinable on death, for life estate, or greater interest, or by assignee of any such person.

Application must be with consent of tenant in tail of full age (if estate be limited in tail under settlement) and all others having *prior* estate.

In other cases consent of all living persons having interest under settlement, and of trustees having interest on behalf of unborn child, must be obtained.

In some cases Court may dispense with consent, *e.g.*, if tenant in tail be infant, consent of persons taking subsequent interest need not be obtained.

Money arising from sales or set aside out of rent reserved, as in case of mining leases, may be paid to trustees, or, on application, into Court, and applied by Court in (1) redemption of the Land Tax; (2) redemption of incumbrance on property; (3) purchase of other hereditaments to be settled in same manner; (4) payment to any person becoming absolutely entitled.

Until so applied money to be invested by Court and interest paid to person who would have been entitled if money had been invested in purchase of land.

Court cannot exercise powers of Act if there be express declaration in settlement to the contrary. But married women's property may be dealt with under Act notwithstanding provision in settlement for restraint of anticipation.

Tenant for term determinable on life, tenant for life or greater estate either in his own right or wife's may, unless settlement creating tenancy stipulate to the contrary; and tenant by courtesy, or in dower, or in right of wife seised in fee of unsettled estate may demise same or any part except principal mansion house and its demesnes, and other lands usually occupied therewith, for 21 years, or in Ireland 35.

Such lease—(1) to take effect within a year; (2) to be by deed; (3) best rent to be reserved without fine; and

such rent to be incident to immediate reversion ; (4) not to be without impeachment of rent ; (5) covenant to pay rent, and other usual covenants and proviso for reëntry on non-payment of rent for twenty-eight days to be inserted ; (6) counterpart of lease to be executed by lessee.

Such demise to be valid as against person granting it, and all others entitled to subsequent estates under the settlement, if estates be settled, and in case of unsettled estates, against wife of husband granting such demise of estates which he holds in right of wife and against all claiming under wife or husband.

*Note.*—This Act amends and consolidates a long series of earlier Acts dating from the years 1856, 1858, 1864, 1874, and 1876.

**TRADE MARKS REGISTRATION: 38 & 39 Vict.  
c. 91 (1875).**

Register of Trade Marks to be established under superintendency of the Commissioner of Patents. Infringement of unregistered trade mark not actionable after July 1st, 1876.

Registered Trade Mark to be assigned and transmitted only in connexion with goodwill of business in goods, or class of goods to which it is affixed.

Registration *prima facie* evidence, and after five years' conclusive evidence, of right to exclusive use of mark.

Without leave of Court mark not to be registered which is identical or nearly so with mark already registered in respect of same class of goods.

*Note.*—39 & 40 Vict. c. 33, extends time to July 1st, 1877, and 40 & 41 Vict. c. 37, further extends time, as far as relates to textile fabrics, to July 1st, 1878.

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*Under the Judicature Acts*

IN THE COMMON LAW DIVISIONS.

WITH

NOTES EXPLANATORY OF THE DIFFERENT CAUSES OF  
ACTION AND GROUNDS OF DEFENCE;

AND

AN INTRODUCTORY TREATISE ON THE PRESENT  
RULES AND PRINCIPLES OF PLEADING

AS ILLUSTRATED BY THE VARIOUS DECISIONS DOWN TO THE PRESENT TIME.

BY

JOHN CUNNINGHAM, Esq.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,

AUTHOR OF

"THE LAW RELATING TO PARLIAMENTARY AND MUNICIPAL ELECTIONS AND PETITIONS."

AND

MILES WALKER MATTINSON, Esq.,

OF GRAY'S INN, BARRISTER-AT-LAW,

LATE HOLDER OF A FIRST-CLASS STUDENTSHIP OF THE FOUR INNS OF COURT, ETC. ETC.

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of the more common form of pleadings in every important kind of action tried in what may still be called the Common Law Courts.

The various pleadings that appear in it have in nearly every case been settled by counsel of standing at the Bar, and form part of the record in cases that have been carried on up to trial or actually tried since the Judicature Acts came into operation.

Several of the pleadings are taken from the reports ; but this source of information was necessarily limited, and the authors are largely indebted to the courtesy of several of the Judges, the Associates and other officers connected with the Courts, to their brethren of the Bar, and to several eminent firms of Solicitors, for the forms which make up the body of the work, and which have been selected with great care from the abundant materials placed at their disposal.

It has seemed to the authors a considerable advantage to be enabled thus to produce a work composed of pleadings which have been drawn under a sense of responsibility in cases which have actually arisen, and which in their nature and facts may be taken as fairly representative of the class of cases that are continually arising in practice. And besides, such pleadings possess the additional value of having passed the adverse criticism of opposing counsel, and in some cases the ordeal of a contest at Judges' Chambers or in Court.

The authors, however, have not been content to take any pleadings on trust, no matter by whom settled ; but have themselves, in the light of the latest decisions, exer-

cised an active though cautious discretion in excluding or correcting any pleading which was clearly erroneous or imperfect.

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Numerous notes have been appended to the various headings under which the pleadings are arranged, and in these notes the object has been to present a brief outline of the law relating to the particular kind of action with which the pleading in question is concerned, and especially to exhibit in a clear light those parts of the law which ought to be present to the mind of the pleader. The scope of the work has not allowed the authors to attempt a complete exposition of the substantive law on any particular subject. Their object has not been to do this; but rather to make a selection of matter which seemed to them likely to be most useful in practice.

It will be noticed that in classifying the pleadings the authors have adopted an alphabetical arrangement, that they have not made the common division into Contracts and Torts, and that they have grouped the statements of defence, &c., along with and under the same head as the statements of claim. It has seemed to them that in

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The authors would take this opportunity of tendering their thanks to their friend Mr. W. T. Waite, of Gray's Inn, who has lent them cordial and valuable assistance in the present undertaking.

Jed  
.. W. M.

1, THE CLOISTERS, TEMPLE,  
*October, 1878.*

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Upon the general principles, according to which damages are to be assessed in actions of contract, *Hadley v. Baxendale* (9 Ex. 341) still remains the leading authority, and furnishes the text for the discussion contained in the second chapter of Mr. Mayne's book. Properly understood and limited, the rule proposed in that case, although in one respect not very happily worded, is a sound one, and has been repeatedly approved both in England and America. The subsequent decisions, which are concisely summarized by Mr. Mayne, have established that mere knowledge of special circumstances is not enough, unless it can be inferred from the whole transaction that the contractor consented to become liable to the extra damage. This limitation is obviously just, especially in the case of persons, such as common carriers, who have no option to refuse the contract. Mere knowledge on their part of special circumstances ought not, and, according to the *dicta* of the judges in the Exchequer Chamber in *Horne v. Midland Railway Company* (21 W. R. 481, L. R. 8 C. P. 131), would not involve the carrier in additional responsibility. Mr. Mayne's criticism of the numerous cases in which this matter has been considered leaves nothing to be desired, and the rules he deduces therefrom (pp. 32, 33) appear to us to exhaust the subject.

Mr. Mayne's remarks on damages in actions of tort are brief. We agree with him that in such actions the courts are governed by far looser principles than in contracts; indeed, sometimes it is impossible to say they are governed by any principles at all. In actions for injuries to the person or reputation, for example, a judge cannot do more than give a general direction to the jury to give what the facts proved in their judgment required. And, according to the better opinion, they may give damages "for example's sake," and mulct a rich man more heavily than a poor one. In actions for injuries to property, however, "vindictive" or "exemplary" damages cannot, except in very rare cases, be awarded, but must be limited, as in contract, to the actual harm sustained.

The subject of remoteness of damage is treated at considerable length by Mr. Mayne, and we notice that much new matter has been added. Thus the recent case of *Riding v. Smith* (24 W. R. 487, 1 Ex. D. 91) furnishes the author with an opportunity of discussing the well-known rule in *Ward v. Weeks* (7 Bing. 211) that injury resulting from the repetition of a slander is not actionable. The rule has always seemed to us a strange one, if a man is to be made responsible for the natural consequences of his acts. For every one who utters a slander may be perfectly certain that it will be repeated.

It is needless to comment upon the arrangement of the subjects in this edition, in which no alteration has been made. The editors modestly express a hope that all the English as well as the principal Irish decisions up to the date have been included, and we believe from our own examination that the hope is well founded. We may regret that, warned by the growing bulk of the book, the editors have not included any fresh American cases, but we feel that the omission was unavoidable. We should add that the whole work has been thoroughly revised."—*Solicitors' Journal*.

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